



**Ongaro v Securex Agencies (K) Limited (Cause E688 of 2017)
[2023] KEELRC 1396 (KLR) (8 June 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1396 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E688 OF 2017**

MN NDUMA, J

JUNE 8, 2023

BETWEEN

WALTER ONDUTO ONGARO CLAIMANT

AND

SECUREX AGENCIES (K) LIMITED RESPONDENT

JUDGMENT

1. The suit was filed by the claimant on 11th April, 2017 in which he seeks the following reliefs:-

- (a) Leave -prorate - June 2014 - February, 2015.
(8x30) x 26 days x (12,548)..... Kshs 7,150.64
(365) (30)
- (b) 1 month pay *in lieu* of notice..... Kshs 12,548.00
- (c) 7 days worked in February, 2015
7/30 x 12,548 Kshs 2,927,87
- (d) Damages for unfair termination
8 x 12,548 x 12..... Kshs 100,384.00
12
- (e) Add Work Injury Benefits Kshs 481,843.20
Grand Total: Kshs. 604,853.51

2. . The claimant (C.W.1) testified that he was employed by the respondent as a Security Guard on 18th June, 2014. That he worked for the respondent until 16th February, 2015. That he earned Kshs.12,548



per month. That on 31st January, 2015 at around 2 pm while deployed on shift at African Quest Safaris Limited offices at City Cabanas along Mombasa Road, Nairobi, he was attacked by a Python in the Central box where he sat. That the snake emerged from the flower bushes, put its head through the window and it spat poison on his face before he ran out and pressed the alarm button.

3, C.W.1 stated that he was rushed to Guru Nanak Hospital and then to Avenue Health Centre and Kenyatta National Hospital where he received treatment. That he continued to be treated at Kenyatta National Hospital and at Nyamira Hospital.

4. That on 2nd February, 2015 the respondent issued a petty cash voucher of Kshs.19,510 for the initial amount paid at Kenyatta National Hospital.
5. C.W.1 stated that he went to his rural home in Nyamira so as to get care from his family. That he had difficulties with his vision as a result of the injury sustained from the snake spit on 31st January, 2015. On 4th February, 2015 he was treated at Optic Medical Clinic Nyamira. On 8th January, 2015, he received a call from Zone Manager Mr. Apuora who asked him to report for duty on 10th February, 2015.
6. That on 9th February, 2015 he travelled back to Nairobi and on 10th February, 2015 he was deployed to guard Aegis Construction Company. That between 11th to 14th he was deployed at Kenya Sweets Limited; on 15th February, 2015 he was deployed to Easy Cott Apartment and on 16th February, 2015 he was deployed at Kazmatt.
7. That he was at this time unaware of a Show Cause letter dated 9th February, 2015 and on 17th February, 2015 he was sent away by the Human Resource Manager M/s Jennifer Aswani who promised to recall him once his eyes were healed.
8. On 18th February, 2015, the claimant reported the matter to the union, Kenya National Private Security Workers' Union who contacted the employer.
9. On 20th February, 2015, the claimant accompanied by two (2) officials of the union visited the offices of the employer, to discuss his treatment and return to work.
10. On 20th February, 2015, the claimant received the notice to Show Cause letter dated 9th February, 2015 by the Human Resource Manager who asked him to sign it but he refused.
11. The union filed Cause No. 766 of 2015 at Employment and Labour Relations Court Nairobi. The said matter was withdrawn on understanding between the union and the employer that the claimant would be paid full terminal benefits together with compensation under the [Work Injury Benefits Act](#).
12. On 19th October, 2015, the final dues were calculated to be Kshs 7,066 and the claimant was paid and cleared. C.W.1 stated that he endorsed on the Clearance Sheet that his dues had not been properly calculated.
13. That on the same day, 19th October, 2015, the claimant was handed a letter of summary dismissal backdated to 16th February, 2015.
14. C.W.1 stated that at all material times, the respondent was aware of the whereabouts of the claimant after the snake injury. That the termination was unlawful and unfair. That the claimant prays to be granted the reliefs set out in the Memorandum of Claim.
15. That by a letter dated 20th January, 2017, the employer wrote to the advocates for the claimant in response to the demand letter. That on 26th January, 2017, the advocate demanded that the respondent do fill Workmen Compensation Forms and forward them to Director of Occupational and Safety



- Health (DOSHS), which they did on 2nd February, 2017. That upon receipt of DOSHS Forms, the Director assessed compensation due to the claimant at Kshs 481,843 on 1st February, 2017. That the assessment duly signed Form ML/DOSHS/WIBA/Form 4 was forwarded to the respondent who was requested to pay the sum assessed to the claimant.
16. That on 6th March, 2017, the employer requested the claimant to undergo a second medical test for purposes of re-assessing the compensation which the claimant did. That to-date, the compensation has not been paid. The claimant prays the Court to enforce the award.
 17. The claimant produced the Certificate of Service; medical report and receipts for various payments; duty roster from the date he states he was at work; medical reports and the assessment by Director of Occupational Health and Safety in the sum of Kshs.481,843 dated 1st February, 2017 as his evidence before the Court.
 18. In its defence, the respondent states that the claimant was employed by the respondent as a security guard on 18th June, 2014 and worked up to 16th February, 2015 when he was summarily dismissed. That he earned Kshs.12,548 per month.
 19. At paragraph 4 of the Statement of defence, the respondent denied any knowledge that the claimant was spat on with venom by a Python snake while in the course of his employment. R.W.1 Walter Onduto Ongaro however testified for the respondent in which he admits that the claimant suffered snake - venom injury in the cause of work. That he was taken to hospital by the company. That after being taken to hospital, the claimant never reported back to work nor did he inform the office of his medication progress. R.W.1 testified further that the claimant never reported back to work nor called the office to inform them about his whereabouts until 16th February, 2015 when he was summarily dismissed.
 20. R.W.1 testified that the respondent assisted the claimant with Kshs 19,510 to seek medical attention at Kenyatta National Hospital.
 21. That on 9th February, 2015, a notice to show cause for absence was sent to the claimant's last known address. That he had absconded from 2nd February, 2015.
 22. R.W.1 denied that the claimant was deployed to guard Aegis Construction on 10/2/2015; Kenya Sweets from 11th to 14th and at Easy Colt Apartment on 16th February, 2015. R.W.1 insisted that the claimant was dismissed on 16th February, 2015 for absenteeism. That the claimant was on 17th February, 2015 sent away from work since he had absented himself from work since 2nd February, 2015.
 24. That on 20th February, 2015 the claimant reported to Human Resource office and was directed to collect the dismissal letter.
 25. R.W.1 stated that they were not aware that the claimant was recuperating at his home at Nyamira as alleged by the claimant.
 26. That the respondent paid the claimant Kshs 7,066 on 19th October, 2015 after the union had filed Cause No. 766/2015 against the respondent. That the suit was withdrawn upon the payment.
 27. R.W.1 admitted that the injuries sustained by the claimant were assessed pursuant to a report filed by the respondent. R.W.1 stated that they sought re-assessment of the compensation assessed by DOSHS.
 28. R.W.1 prays that the suit be dismissed with costs.



Determination

29. The parties filed written submissions which the Court has carefully considered together with the evidence adduced by the parties.
30. The claimant was candid and withstood the cross-examination well. The claimant came forth as a truthful witness whereas, R.W.1 contradicted the pleadings by the respondent with regard to whether or not the claimant had suffered snake spit injury in the course of duty.
31. The court believes the testimony by the claimant that he was employed by the respondent on 18th June, 2014 and that he had served the respondent until the 16th February, 2015 when he was handed a letter of summary dismissal by the respondent. The Court believes that the claimant had severe eye injuries and required recuperation at home while undergoing treatment. The Court believes that the respondent at all material times knew the medical condition of the claimant and the best they could do under the circumstances was to grant him paid medical – Leave until he was able to resume work.
32. The Court finds the narration by the claimant true and credible that he was told to report back to work on 10th February, 2015 by Zone Manager Mr. Apuora. If this was not true, nothing would have been easier than the respondent to call Mr. Apuora to refute that fact.
33. The Court believes the testimony by the claimant that despite the injury he had suffered at work, he resumed work on 10th February, 2015 as instructed by Mr. Apuora. That he was deployed at Aegis Construction on the 10th February, 2015; at Kenya Sweets on 11th to 14th and at Easy Cott Apartment on 15th February, 2015; and Kazmatt on 16th February, 2015. The following day on 17th February, 2015 he reported on duty and was sent away by the Human Resource Manager, one M/s Jennifer Aswani. Again, nothing prevented the respondent from calling this witness to controvert these facts adduced by the claimant.
34. The Court finds that the respondent dismissed the claimant without notice in violation of Section 36 of the Employment Act; without giving him a hearing in violation of Section 41 of the Act and for no valid reason in violation of Sections 43 and 45 of the Employment Act, 2007. The respondent had obligation to pay medical bills for the claimant, who was injured in the course of duty. The respondent had an obligation to fill DOSH Forms and submit the same to the Director of Occupational Safety and Health and they belatedly did that after summarily dismissing the claimant. The respondent was equally obliged to pay the award assessed and granted by the Director DOSH in respect of the injury sustained by him in the cause of duty. The Respondent failed in all those respects and the claimant is entitled to payment of the claims set out in the Statement of Claim including:-
 - (a) One month salary in lieu of notice in the sum of Kshs 12,548.
 - (b) Salary for days worked in February, 2015 in the sum of Kshs 2,927.87.
 - (c) Payment *in lieu* of pro-rata leave in the sum of Kshs 7,150.64 and
 - (d) Compensation assessed by the Director of DOSH pursuant to the form submitted by the employer in the sum of Kshs 481,843.20.

This Court has an obligation to enforce payment of this assessment which has not been appealed against by the respondent.

35. Furthermore, 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 suffered serious injury in the course of work for which he was unlawfully summarily dismissed by the respondent. The claimant had served the



respondent for a short period of about six (6) months when he suffered the injury and was forced to stay at home to recuperate. The claimant did not contribute to the dismissal by simply staying at home while recovering from the injury. The claimant suffered loss and damage as a result of the injury to himself and the unlawful loss of the job. The claimant was not compensated by the respondent for the injury and the job loss until he came to Court. These are aggravating circumstances in this matter.

36. The Court awards the claimant, the equivalent of three (3) months' salary in compensation for the unlawful summary dismissal in the sum of Kshs (12,548 x 3) = Kshs 37,644.
37. In the final analysis, judgment is entered in favour of the claimant against the respondent as follows:-
 - (a) Kshs 12,548 notice pay.
 - (b) Kshs 7,150.64 *in lieu* of leave.
 - (c) Kshs 2,927.87 for 7 days worked in February, 2015.
 - (d) Kshs 481,843.20 being award from DOSH.
 - (e) Kshs 37,644 being compensation for unlawful summary dismissal.
Total award: Kshs.542,112.84.
 - (f) Interest at Court rates from date of judgment till payment in full.
 - (g) Costs of the suit.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 8TH DAY OF JUNE, 2023.

MATHEWS N. NDUMA

JUDGE

Appearances

Mr. Nyaencha for claimant

Mr. Ng'ang'a for Respondent

Ekale – Court Assistant

