



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
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Kenya National Private Security Workers Union v Managing Director Radar Security Ltd. (Cause E002 of 2022) [2023] KEELRC 2344 (KLR) (28 September 2023) (Judgment)

Neutral citation: [2023] KEELRC 2344 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE E002 OF 2022
MA ONYANGO, J
SEPTEMBER 28, 2023**

**BETWEEN
KENYA NATIONAL PRIVATE SECURITY WORKERS UNION CLAIMANT
AND
MANAGING DIRECTOR RADAR SECURITY LTD. RESPONDENT**

JUDGMENT

1. Vide a Memorandum of Claim dated 5th January, 2022 and filed on 7th January, 2022, the Claimant who is a trade union registered under the Labour Relations Act seeks orders on behalf of its members Geoffrey Makhoha Wanjofu, Erick Makau and Victor Otieno Osewe under the following heads:
 - i. Notice one month
 - ii. Underpayment of wages
 - iii. Overtime for 2016,2017 and 2018
 - iv. Public holidays
 - v. Salary for February and March 2019
 - vi. Annual leave for 3 years
2. It is the Claimant’s case that the Grievants were summarily dismissed on allegations that they organized, involved, participated and incited their colleagues to strike, allegations which they denied.
3. It is further the Claimants case that the Respondent did not give the Grievants a chance to defend themselves as required under section 41 and 43(1) of the Employment Act.
4. The Claimant avers that the Respondent failed to turn up for conciliation and the conciliator issued a certificate of unresolved dispute as required under section 69 and 73 of the Labour Relations Act.



5. Upon being served with Summons to Enter Appearance the Respondent filed a Memorandum of Appearance through Chomba & Mbugua Advocates. The Respondent however did not file a defence to the Memorandum of Claim.
6. The case was certified ready for hearing as an undefended claim on 6th February, 2023.
7. On 13th March 2023 the court directed the Claimant to serve counsel for the Respondent physically and file an affidavit of service.
8. On 25th April, 2023, after satisfying itself that the Respondent was properly served and had failed to attend court, the court directed that the undefended suit proceeds by way of pleadings, documents affidavits and written submission.
9. I have considered the Memorandum of Claim and attached documents. I have further considered submissions filed by the Claimant.
10. It is clear from the record that the Grievants were never given an opportunity to defend themselves.
11. It is apparent from the record that the Grievants were asked to record statements on the reasons why they did not report for duty on 14th April 2019.
12. Each of them wrote statements as reproduced below.

GEOFFREY MAKOKHA WANJOFU

BOX 42-50211

NAITIRI -KENYA

26TH APRIL,2019.

THE MANAGER

RADAR SECURITY LTD

BOX 76690-00508

NAIROBI -KENYA

ELDORET BRANCH

REF: REASON WHY I DID NOT REPORT ON DUTY ON 14TH APRIL 2019 ON TIME

Dear Sir (Madam,

I Mr. Wanjofu of C/N 10559 Radar security guard it was on Sunday morning 14th April 2019 I come early in the morning to the factory as usual I sign in .I found my fellow colleagues assembling together I joined them to find out what was happening but the matter was the issue concerning the salary delay.

We informed our supervisors to call us our branch manager Mr. Hussein who came and discuss with us then the issue was solved. We dispersed to our various location of work at around 8:00 am.

I did not incite anybody because we were all having the same problem and there was no communication from the above office. We were paid the following day. Otherwise the work is going on well we had no problem up to now.

Yours faithfully

Geoffrey Makokha Wanjofu

Signed



26th April, 2019

0728-639-514.

Osewe victor

p/n 19978

THE MANAGER

RADAR SECURITY LTD

PO BOX 76690

ELDORET

Dear sir/

Ref statement

I Musonye of P/No 10766 Radar Security at Raiply, do confirm that on 13th Saturday, April, 2019 at 1800hrs after signing out of duty found my colleagues gathered at Gate "B" where I joined them to understand more about what the issue was. there was s discussion about why the salary had delayed long. after that discussion all the present guards agreed to be on duty early in the morning. sign in and wait at Gate "B" for an address form our leaders for the said matter. I as an individual do confirm that I didn't incite any guard or block any one from going to his or her own assignment, all guards who were present came here willingly.

After our manager came and addressed the said issue, all was well and I and other guards left for their entire assignments on that day, with no other pending issue.

With thanks

Erick Musonye

C/NO 10766

RADAR –Raiply

signed

26-4-2019

RADAR LIMITED

ELDORET BRANCH MANAGER

REF: MY KNOWLEDGE ON INCIDENT OF DATE 14-04-2019

ON THE ABOVE MENTIONED DATE I REPORTED TO WORK AS USUAL AT 0600HRS. I SIGNED IN ON THE CHECK LIST BUT DID NOT GO TO MY ASSIGN POST SINCE I WANTED A CLEAR INFORMATION FROM MY MANAGER CONCERNING THE LATENESS OF MY SALARY FOR THE MONTH OF MARCH. HE CAME AND GAVE ME A CLEAR INFORMATION ABOUT THE SITUATION TO WHICH I UNDERSTAND WITH SATISFACTION. I THEN REPORTED TO MY ASSIGNED POST AND I'VE BEEN REPORTING TO WORK DAILY WITHOUT ABSENTEEISM NOR LATENESS.

CONCERNING THE INCITEMENT OF MY FELLOW GUARDS AND GUARDETTES NOT TO GO TO THEIR ASSIGNED POSTS. I CANNOT REMEMBER ME INCITING ANYBODY ON ABOVE DATE OR ANY DATE. IF IT CAN BE PROVED TO ME THAT I DID SO IN ANY WAY OR THE OTHER AS IT IS BEING CLAIMED. I WOULD BE PLEASED



THAT'S ALL I CAN GIVE ABOUT THE ABOVE MENTIONED INCIDENT TO THE BEST OF MY KNOWLEDGE.

YOURS SINCERELY

OSEWE VICTOR

P/N 9978

13. The Grievants were all summarily dismissed by letters dated 27th April, 2019 which are identified in all respects except the name of the Grievants and the reference number. The letter to Geoffrey Makhoha is reproduced below:

REF:RAD/HR/SD/IO559/04

27TH APRIL, 2019

GEOFFREY MAKOKHA WANJOFU

RAO/HR/10559/04

ELDORET

Dear Sir/Madam,

RE: SUMMARY DISMISSAL

On 14th April, 2019 whilst assigned day guarding duties at Raiply wood, Eldoret, you organized, involved participated and incited your colleagues to strike causing disturbance and paralyzing the operations at our client factory premises and also refused to take over duties.

Be advised that your action has put security of our client at risk and this is tantamount to Gross misconduct which leaves the company with no other option but to summarily dismiss you from employment under employment Act revised Edition 2012(2017) Laws of Kenya.

Arrange to return the company property in your possession before payment of your final dues.

Yours faithfully,

RADAR LTD

Signed

A. HUSSEIN

BRANC MANAGER

14. A trade dispute was reported to the Minster by the Claimant and C. Chemursoi of Eldoret Labour Office appointed as conciliator.
15. According to the documents on record, Mr. Chemursoi called for a meeting on 30th July, 2019 which was attended by a representative of the Claimant while the Respondent did not turn up. The Conciliator therefore issued a certificate of unresolved dispute.
16. According to the documents on record, Erick Musonye was employed by the Respondent as a security guard on 8th August 2016 at a monthly salary of Ksh. 10,000 which was increased to Ksh. 15,000 per month from 2017. At the time of summary dismissal he had not been paid salary for February and March, 2019



17. Victor Otieno Osewe was employed by the Respondent on 15th October, 2016 at a monthly salary of Ksh. 10,000 which was increased in 2018 to Ksh. 15,444. He earned the said salary to the date of dismissal on 19th April, 2019.
18. Geoffrey Makhoha Wanjofu was employed by the Respondent on 5th May, 2016 as a security guard at a salary of Ksh. 10,000 which was increased in 2017 to Ksh. 15,544.
19. The Respondent having been properly served and having failed to attend the conciliation and to defend the suit herein, I enter Judgment for the Claimant against the Respondent as prayed and award each of the Grievants the following.
 - i. Geoffrey Makhoha Wanjofu Ksh. 360,765
 - ii. Erick Musonye Ksh 360,765
 - iii. Victor Otieno Osewe Ksh. 360,765.
 - iv. Grand total Ksh. 1.082,295.
 - v. I further award the Claimant Ksh. 50,000 on account of reasonable reimbursable costs and necessary expenses of the suit.
 - vi. The decretal sum shall attract interest at court rates from date of Judgment till payment in full.

DATED, DELIVERED VIRTUALLY AND SIGNED AT KITALE THIS 28TH DAY OF SEPTEMBER, 2023.

M. ONYANGO

JUDGE

