



**Katiku & another v Texas Alarms (K) Limited (Cause 911 of 2017)
[2023] KEELRC 2527 (KLR) (12 October 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2527 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 911 OF 2017
MN NDUMA, J
OCTOBER 12, 2023**

BETWEEN

SAMUEL MUTUVA KATIKU 1ST CLAIMANT

DENNIS MUTURI NJOROGE 2ND CLAIMANT

AND

TEXAS ALARMS (K) LIMITED RESPONDENT

JUDGMENT

1. The two claimants filed suit on 16/5/2017 seeking the following reliefs:-

(1) A declaration that the dismissal of the Claimants is unlawful, wrongful and unfair.

(2)

(a) An order directing the Respondent to pay the 1st Claimant as follows:-

(i) Days worked Kshs.5,711.54

(ii) In lieu of notice of termination Kshs.13,500.00

(iii) In lieu of leave Kshs.40,889,36

(iv) In lieu of rest days Kshs.101,769.08

(v) In lieu of House allowance Kshs.72,228.75

(vi) In lieu of public holidays Kshs.20,769.00

(vii) Twelve month's compensation.....Kshs.162,000.00

(b) An order directing the Respondent to pay the 2nd Claimant as follows:-



- (i) Days worked Kshs.4,793.46.54
 - (ii) In lieu of notice of termination Kshs.11,330.00
 - (iii) In lieu of leave Kshs.4,575.59
 - (v) In lieu of rest days Kshs.11,330.02
 - (vi) In lieu of Public holidays Kshs.2,614.62
 - (vii) In lieu of House allowance.....Kshs.10,197.00
 - (vii) Underpayment of wages Kshs.7,140.00
 - (viii) Twelve month's compensation Kshs.135,960.00
- (3) Certificate of Service
- (4) The 1st Claimant's original KCPE examination certificate, original school leaving certificates, original First Force Training Academi Certificates, original Kenya Meat Commissions recommendation letter and original 911 Security Services Limited Certificate of Service and the 2nd Claimant's originals KSCE Certificate.
- (5) Costs and Interes.
2. Both claimants testified as CW1 and CW2 respectively that they were employed by the respondent as security guards on diverse days.
 3. The 1st claimant was employed in July, 2013 whereas the 2nd claimant was employed in September 2016. 1st claimant testified that the respondent returned all the copies of his certificates set out in the Statement of Claim and demonstrated the same to be returned to him. That his salary was Kshs.350 per day paid forthrightly. That on 3/5/2016, he was issued with a letter of promotion as permanent guard.
 4. That the 1st claimant was situated at premises of different clients and the last deployment was at Grey Land Go-downs at Athi River. That he made a clean record. That on 11/3/2017, CW1 reported to work as usual at 6 pm and at around 10.30 p.m was conducting patrol within the premises when he was accosted by armed thugs.
 5. That the thugs restrained him and carried him to godown number 3 where he found CW2 was restrained. That the gang of thugs went about their business while others kept guard over them. That after a while the thugs forced the two of them into restrooms and locked them in. That they later were able to untie themselves and broke the door to the rest rooms and escaped to the neighbourhood where they sought a phone and called their supervisor Mr. Alela.
 6. That the Supervisor came to the site at 6am and they patrolled the establishment and ascertained that one of the thugs had gained entry through.
 7. The Operations Manager joined them at 7.45 am and led the claimants to Athi River Police Station without any explanation. The manager demanded the arrest of the claimants. The two claimants were taken into custody and were only released on 14/3/2017 upon posting cash bail of Kshs.10,00 each. The two were directed to appear in Court on 21/3/2017 when they were told that no charges had been preferred against them. No charges have been preferred against them to date. CW2 testified corroborating the narrative by CW1. CW2 was employed in September, 2016 and was in similar predicament as narrated by CW2 on 11/3/2017. The fact narrated by CW2 relates to him *mutatis mutandis*.



8. CW2 earned Kshs.390 per day forthrightly. The claimant stated that they were never issued with payslips.
9. The two claimants narrated that on 7/4/2017 they reported to work after being told that no charges were laid against them. That the Operations Manager informed the two that the respondent had already dismissed them from work. The respondent did not issue the two with letters of dismissal nor were they given Certificate of Service. They were not paid terminal benefits and were not compensated for the job loss.
10. That the claimants were dismissed without notice; notice to show cause and were not given any hearing. The claimants pray to be awarded as set out in the Statement of Claim.
11. RW1 Bernard Aduda testified for the respondent and relied on a witness statement dated 10/7/2017 as his evidence. RW1 stated that the two claimants were at work on 11/3/2017 serving at a Godown at Athi River named Greyland. That they served as night Guards. That they were arrested at the site upon the Operations Manager reporting a theft incident at the claimant's premises. That police visited the Go-downs which was the scene of crime and the two were arrested.
12. That the arrest took place on 12/3/2017 and that is the last time the respondent saw the claimants again. That the two absconded duty. That the respondent called the two via their phones but the phones were off. That the 2nd claimant earned Kshs.390 per day. That they were not paid for the month of March, 2017. That they worked six (6) days a week and worked 54 hours a week, which translates to 12 hours a day. That leave was given to the permanent workers. That the 1st claimant was on a three months' contract which is before Court and worked continuously. That the 1st claimant is entitled to prorata leave not taken. That the two were paid overtime when they did overtime. That they did not work during public holidays as per the company register. That their payslips show that they had no holidays owed to them. That they were reliever guards. That the 2nd claimant was arrested before he had taken annual leave from May, 2016. That the 2nd claimant only worked on 3 months' contract basis from September, 2016 and was arrested on 11/3/2017. That both are entitled to pro rata leave upon clearance. That both have not cleared and still have company uniform. That the claimants worked at different stations except for those three days. That the suit be dismissed.

Determination

13. The parties filed written submissions which the Court has carefully considered together with the evidence adduced by CW1, CW2 and RW1
14. The respondent's evidence is that the two claimants absconded work upon being arrested by police regarding a robbery incidence at their work station. That upon their arrest on 12/3/2017, the two never returned to the work station again and have not been paid any terminal benefits because they have not cleared with the respondent. The claimant on the other hand adduced evidence that upon their arrest on 12/3/2017, at the instigation of the Operations Manager, they returned to work on 14/3/2017 when they were released by the police without any charges laid against them but the Operations Manager informed them that the respondent had already dismissed them from work.
15. The testimony by CW1, CW2 and that by RW1 is mutually destructive. The finding by the Court as to whether the version of the narrative is true is based solely on an account of the credibility of the evidence based on the veracity of the narrative and whether there are circumstances that corroborate or render credence to either of the versions.



16. It is common cause that it is the claimants who reported the theft incidence to the respondent and waited for RW1 and the Operations Manager to visit the scene. It is also true that the Operations Manager then reported the matter to the police followed by the arrest and detention of the claimants until they were released firstly on cash bail though completely without any charges being laid against them.
17. The claimants told the Court that they then reported to work but found that the respondents had already dismissed them from work.
18. Considering the circumstances of the case, the version told by CW2 and CW2 is more credible than that told by the respondent. The claimants having called the employer to a scene of crime had no reason in the Court's view to abscond from work. Indeed the Court believes the testimony by the claimants that they were locked up at the behest of the Operations Manager who thereafter proceeded to summarily dismiss them from employment without notice; notice to show cause or any hearing accorded to them.
19. The fact that the claimants have not been paid any terminal benefits; nor given Certificates of Service renders more credence to the evidence adduced by the claimants as opposed to that told by RW1. Indeed, no reason was provided as to why the operations manager did not come to Court to refute the allegations made against him by the two claimants.
20. The Court finds that the summary dismissal of the claimants was for no valid reason and a fair procedure was not followed before the action was taken against the two employees.
21. The respondent violated Section 36, 41, 43 and 45 of the Employment Act, 2007 and the claimants are entitled to compensation in terms of Section 49(1) (c) and (4) of the Act.
22. The two proved that they are entitled to payment in lieu of one month notice; that they are entitled to the salary for days worked in March, 2007, are entitled to the annual leave days not taken. The 2nd claimant is also entitled to payment of arrear wages owing from underpayment for the short period he worked for the respondent. It is not in dispute that he was paid at the rate of Kshs.390 per day which was below the minimum wage applicable to security guards at the time. The two showed that they were not paid house allowance during the period worked. The Court finds that the claimants have the onus of proving that they had worked during public holidays but were not paid and that they were not given rest days or paid in lieu thereof. The claimants did not discharge that onus.
23. Accordingly, the Court awards the two claimants terminal benefits as follows:-
 - 1st Claimant
 - i. Arrear salary Kshs. 5,711.54
 - ii. Notice pay Kshs. 13,500
 - iii. Leave pay Kshs. 40,889.36
 - iv. House allowance Kshs. 72,228.75.
 - 2nd claimant
 - i. Arrear salary Kshs. 4,793.60
 - ii. Notice pay Kshs. 11,330
 - iii. Leave pay Kshs. 4,575.59.



- iv. House allowance Kshs. 10,197.
- v. Underpaid wages Kshs. 7,140.

Compensation

24. The 1st claimant had served the respondent from July, 2013 to March, 2017 a period of about four (4) years while the 2nd claimant had served the respondent from September, 2016 to March, 2017 a period of about seven (7) months. The two lost their employment suddenly without any justification and were not paid terminal benefits nor given Certificate of Service to enable them get alternative employment. The two were wrongly incarcerated at the behest of the Operations Manager and spent at least two days in custody. The two lost their source of income and career prospects and suffered loss and damage. The Court has considered the respective period each had served and awards them compensation as follows:-

1st Claimant

The Court awards the claimant the equivalent of three (3) months salary in compensation for the unlawful and unfair termination of employment in the sum of Kshs.(13,500 x 4) = Kshs. 54,000.

2nd Claimant

The claimant had served for a period of one year but none the less suffered job loss and incarceration at the behest of the respondent. The Court awards him two (2) months' salary in compensation for the unlawful and unfair termination in the sum of Kshs. (11,330.92 x 2)22,661.84

In the final analysis, judgment is entered in favour of the claimants against the respondent as set out above as follows:-

- a. 1st Claimant – Kshs. 186,329.65
- b. 2nd Claimant – Kshs. 60,698.03
- c. Interest at Court rates from date of judgment till payment in full.
- d. Costs of the suit.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 12TH DAY OF OCTOBER, 2023.

MATHEWS N. NDUMA

JUDGE

Appearance

M/s Muli for claimants

M/s Odero for respondent

Ekale: Court Assistant

