



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAKURU

CAUSE NO. 136 OF 2014

PETER MAINA MIRUIKI.....CLAIMANT

VERSUS

VIGILANCE SECURITY SERVICES LTD.....RESPONDENT

JUDGEMENT

1. The Claimant filed his Memorandum of Claim dated 29th April, 2014, on the 6th May, 2014 claiming to have been unfairly terminated by the Respondent. The Claimant prays for the following remedies: -

- a) One month salary in lieu of Notice**
- b) Salary for 5 months between august 2013 and December, 2013.**
- c) Underpayments**
- d) Normal overtime**
- e) Off duties**
- f) Public holidays.**
- g) Leave-pro-rata.**
- h) Compensation under section 49(1)(c).**
- i) Costs of suit be borne by the Respondent.**

2. The summary of the claimant's case is that the claimant was employed by the Respondent on the 9th January, 2013 as a night guard earning a monthly salary of Kshs.6500. He was deployed to Mann C.K Patel Building which is situated along Kenyatta Avenue in Nakuru Town. The claimant contends that he was underpaid.

3. He avers that he reported to work at 5:30pm to 6:30 am in the morning everyday of the week without any rest day. He alleged that the Respondent made him work during public holidays without any compensation.

4. The claimants avers that on 10th July, 2013 while guarding the said building, the alarm of the building he was guarding went off prompting him to check behind the building and there was nothing. He climbed the stairwell to check upstairs and while pipping through he noted a door was open and suddenly he was hit on the head which made him roll to the ground. The caretaker of the building raised alarm and he was rushed to Evans Sunrise hospital for first aid and then transferred to PGH Nakuru where he was admitted for 7 days.

5. The claimant avers that he then reported to work to inform his employer of his progress who was gracious and gave him off to heal.

6. He avers that he received his July salary as usual through his bank however that he never received his august pay to December pay forcing him to inquire from the Respondent as to why he was not paid when he was recuperating and on sick off.

7. On approaching the Respondent, he met the manager who ordered him out and informed him that his services were no longer needed.
8. The claimant took issue with the way the Respondent dismissed him and contended that he was dismissed while on sick off contrary to Article6(1) of the ILO Convention of 1982 no 158.
9. The Respondent entered appearance on the 15th May, 2014 and filed a response to the claim on the 5th August, 2014 denying all the averments of the Claimant herein.
10. The Respondent admitted to employing the claimant on 1st February, 2013 and placing him on a 3 months' probation which ended in April, 2013 and his employment became permanent from 1st May, 2013.
11. The Respondent avers that the claimant was indeed injured on the 10th July, 2013 however that the injury occurred as a result of the claimant hiking a lift in a car at CK Patel building and after the injury the claimant absconded duty and never informed the Respondent of his progress as alleged.
12. The Respondent denied ever giving the claimant any permission for being away from work on alleged sick off. According to the Respondent they only learnt of the claimant's whereabouts in January, 2014 when they received a demand letter from Wanyama and co advocate seeking for payments of the claimant dues for alleged unfair termination of Kshs. 1,720,875.
13. The Respondent maintains that the Claimant is the one that absconded duty and he ought to infact compensate the claimant 3 months' salary in lieu of notice and for breach of employment contract.
14. The Claimant filed a response to defence on the 25th August, 2014 maintaining that he was injured while on duty and the Respondent dismissed him while still recuperating contrary to the law.

Hearing.

15. This matter proceeded for hearing on the 28th October, 2021, where the claimant Peter Maina Miruiki adopted his witness statement dated 22.3.2015 and in summary testified that he was injured while on duty then fired by the Respondent while on sickoff. He prayed for the claim to be allowed as prayed.
16. The Respondent's witness did not give their testimony. The advocates for the Respondent stated that he had lost contact with its clients and therefore could not summon them for hearing and did not participate in the hearing of the claimant's case as well.

Submissions.

17. The claimant submitted from the onset that he was unfairly terminated in that the termination was in violation of the provisions of section 43 of the Employment Act. It was argued that the termination by the Respondent failed the test of substantive and procedural fairness as provided for under section 41 of the Employment Act.
18. The claimant then cited the case of **Rashid Jeneby V Prime Bank Limited [2015] eKLR**. Which Court held that

“The burden placed on the employer is to demonstrate on a balance of probability the existence of a valid reason that would move a reasonable employer to terminate the employment.”
19. Accordingly, it was submitted that the Respondent had no reason for terminating the services of the claimant therefore that the termination ought to be declared unfair in accordance with section 45 of the Employment Act.
20. The claimant also submitted that as much as the Respondent alleged that the claimant absconded duty they have not demonstrated any steps they took to reach out to the claimant as required by law.
21. With regards to the prayers sought, the claimant submitted that he has discharged his duty on a balance of probability and demonstrated that he was unfairly terminated therefore he ought to be compensated and thus the claim be allowed as prayed together with costs.
22. I have examined the evidence and submissions filed herein. The claimants gave evidence that he was dismissed by the respondent while on sick off.
23. The respondents offered no evidence to counter the claimants case and therefore the claimants case remained uncontroverted.
24. I find for claimant as follows;

1. 1 months salary in lieu of notice 11,633.55

2. Salary for 5 months not paid while on sick off

= 11,633 x 5

= 58,167.75

3. Compensation for unlawful termination equivalent to 8 months = $8 \times 11,633.55 = 93,068.40$

4. Underpayment of wages as pleaded = 52,180.40

5. Leave for 8 months = 6,830/=

TOTAL = 221,880/=

6. The rest of the claim is not proved.

7. The respondent will pay costs of this suit plus interest at court rates.

DATED AT NAKURU THIS 21ST DAY OF JANUARY, 2022

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

AND DELIVERED ON THIS 21ST DAY OF JANUARY, 2022 BY

HON. JUSTICE D. NDERITU

JUDGE