



Kenya National Private Security Workers Union v Saos Security Limited (Cause 60 of 2019) [2022] KEELRC 14686 (KLR) (20 January 2022) (Judgment)

Neutral citation: [2022] KEELRC 14686 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 60 OF 2019
S RADIDO, J
JANUARY 20, 2022**

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

JUDGMENT

1. The Kenya National Private Security Workers Union (the Union) sued Saos Security Ltd (the Respondent) on 3 July 2019, and it stated the Issue in Dispute as:
Unfair dismissal and failure to pay final dues of Mr Julius Omogo Abaja.
2. Despite being served with Notice of Summons and Statement of Claim on 1 December 2020, the Respondent did not enter Appearance or file a Response.
3. However, during appearances on 19 January 2021, an advocate, Ms Imbaya appeared on behalf of the Respondent and indicated that she would serve a Response upon the Union within 7-days (the Response was not filed as stated).
4. On 10 May 2021, the Court fixed the Cause for hearing on 4 October 2021.
5. The Cause proceeded to hearing and Julius Omogo Abaja (the Grievant) testified.
6. The Court has considered the pleadings and evidence.

Limitation

7. The Union pleaded that the Grievant was dismissed on 15 December 2015.
8. The Memorandum of Claim was lodged in Court on 3 July 2019.



9. Section 90 of the *Employment Act*, 2007 has prescribed a limitation period of 3-years in actions arising from contracts of employment.
10. The Cause herein was filed more than 3-years after the accrual of the cause of action and is therefore statute barred thus the Court has no jurisdiction.
11. However, on the supposition that the Court is wrong on the limitation question, it would go ahead and consider the dispute on the merits.

Unfair termination of employment

12. The Grievant's testimony that he was dismissed on account of ill health on or around 15 December 2015 was not rebutted or controverted.
13. In consideration of section 35(1)(c) of the *Employment Act*, 2007 which requires the employer to issue a written notice and section 41 of the Act which contemplates a hearing if termination of employment is on account of physical incapacity (among other grounds), and there being no evidence of a notice or a hearing, the Court would have found that the Respondent unfairly terminated the Grievant's employment.

Compensation

14. The Grievant served the Respondent for about 12 years, and in consideration of the length of service, the Court would have been minded to award maximum compensation equivalent to 12 months gross wages.

Salary in lieu of notice

15. The Respondent did not demonstrate that it gave the Grievant written notice, and the Court would have allowed the equivalent of 1-month salary in lieu of notice.

Breach of contract

Accrued leave

16. The Union sought Kshs 147,291/- on account of accrued leave over 13 years of employment.
17. The Grievant did not disclose whether he sought leave and was denied or whether he carried forward the leave with the permission of the Respondent.
18. With the lack of evidential foundation and in light of section 28(4) of the *Employment Act*, 2007, the Court would have declined to allow this head of the claim.

Overtime (public holidays, rest days and normal overtime)

19. The Union asserted that the Grievant worked overtime for 13 years and was not paid for the extra-hours.
20. In this respect, the Grievant prayed for Kshs 341,016/- being rest days, Kshs 71,045/- as public holidays overtime and Kshs 1,918,800/- being normal overtime.
21. The claim for overtime being directly anchored on contract should have been claimed within 3-years, or if the same comprised continuing injury, within 12 months of cessation.



22. The Union moved the Court nearly 18 months after separation between the Grievant and the Respondent and the Court would have declined to allow this head of the claim.

Underpayments

23. The Grievant testified that he was paid below the prescribed minimum wage during the duration of the contract and he computed the underpayments as amounting to Kshs 8,319,495/-.
24. To support the head of the claim, the Union produced a copy of Legal Notice No. 117 of 2015.
25. The aforesaid notice took effect from 1 May 2015 and therefore cannot support the claim for overtime before the effective date.
26. Since the Union did not set out as a matter of evidence the prescribed minimum wages prior to 1 May 2015, the Union did not prove this head of claim to the required standard.
27. In respect to underpayments for 2015, the Court however notes that the Grievant's salary was Kshs 11,330/- from May 2015 to separation on 15 December 2015.
28. The prescribed minimum wage during the period was Kshs 10,954/- before 15% house allowance.
29. Were it not for limitation, the Court would have concluded that the Grievant was not underpaid save for house allowance.

Certificate of Service

30. A certificate of service is a statutory entitlement and the Respondent should issue one to the Grievant within 21 days.

Conclusion and Orders

31. The Court finds and declares that the action herein was statute barred by virtue of section 90 of the *Employment Act, 2007*.
32. The Memorandum of Claim filed in Court on 3 July 2019 is dismissed with no order on costs.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 20TH DAY OF JANUARY 2022

RADIDO STEPHEN, MCI Arb

JUDGE

Appearances

For the Union Emukule & Co. Advocates

For Respondent did not participate

Court Assistant Chrispo Aura

