



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAKURU

CAUSE NO.131 OF 2018

ABRAHAM NYARANGO ONCHONGE.....CLAIMANT

VERSUS

ROBINSON INVESTMENT LIMITED.....RESPONDENT

JUDGEMENT

1. The claimant was employed by the respondent, security service provider, on 13th November, 2014 as a day/night guard earning a monthly salary of Ksh.6,500.00 , which increased to Kshs. 8,600 on 1st November, 2015 and on 1st October, 2017 the salary was further enhanced to Kshs. 9,700.
2. The working hours were from 6am to 6pm on a day shift or 6pm to 6am for the night shift.
3. On 31st October, 2017, the claimant avers that he was summoned by one Mr. Nicholas, who is one of the Respondent's manager on allegations that there was a gang that had been organized by the claimant to raid Gilanis Limited. He was then instructed to hand over the company uniform and any other property in his possession and was immediately suspended for one week to allow investigations into the matter.
4. On reporting after one week he was send home for a further one week and on 20th November, 2017, the claimant was paid his dues and informed that his services were terminated on the 31st October, 2017.
5. The claimant contends that his termination was unlawful as he was not subjected to any disciplinary hearing neither was he given reason for the said termination.
6. The claimant avers that he was underpaid and made to work on all public holidays without any compensation for the work done. Further that he was never paid any house allowance. He also stated that he took leave once in the three years he worked for the Respondent.
7. The claimant therefore prays for the following reliefs;
 - a) **A declaration be made to the effect that the claimant's termination was unlawful and unjustified as the same was not within the ambits of the Employment Act, 2007 and any other labour laws.**
 - b) **The Claimant herein be awarded 12 months' compensation for the unlawful and unjustified termination as provided for under section 49(c) of the Employment Act 2007, laws of Kenya, Totaling to Kshs. 184,499.16**
 - c) **The Respondent herein to pay the claimant one month's pay in lieu of notice.**
 - d) **Underpayment of Kshs. 189,261.88**
 - e) **Overtime pay of Kshs. 409,025.62**
 - f) **Off days'/Rest days' pay of Kshs 233,728.93**
 - g) **Annual leave pays of Kshs 24, 836.42**

h) Refund of Kshs 3,600 being uniform refund.

i) Certificate of service

j) Cost and interest of this claim

k) Any other relief that the court may deem necessary to grant.

8. During hearing the claimant adopted his witness statement dated 8.3.2018 together with the list of documents and further list of document dated 29.3.2021.

9. The Respondent entered appearance on the 31st May, 2018 and filed a preliminary objection on the 13th July, 2018 and a response to the claim on even date.

10. In the Response, the Respondent admitted to employing the claimant from 11.11.2014 to 31.10.2017, however, that the claimant was not terminated but deserted employment after the Respondent's client (Gilanis limited) reported him for stealing.

11. By a letter dated 6th December, 2017 the claimant through the firm of Ochweri, Ngamate Advocates and co advocates demanded for the claimant dues which culminated to a series of meeting leading to agreed settlement of Kshs. 34, 300 which was reduced to writing vide a letter of 9.2.2018. subsequently the claimant's advocates were issued with three cheques dated 19.2.2018,19.3.2019 and 19.4.2018 each of Kshs. 11,434.

12. A discharge voucher was signed by the claimant's advocates on the 15th February, 2018. The Respondent therefore avers that there was no other claim between it and the claimant.

13. During hearing the Respondent called one witness, **Agnes Rutinu**, the Respondents director as RW-1, who adopted her witness statement of 15.10.2018 and produced the list of document dated 11.7.2018. He testified that the claimant deserted employment and demanded his dues through Ochweri Advocates. That the terminal dues claim was discussed in a series of meeting and a settlement of Kshs 34,300 was reached between the parties which money was paid to the claimant through their advocates on record. She also testified that a discharge voucher was executed by the claimant's advocates therefore that the claimant does not have any claim against the Respondent.

14. Upon cross examination, the Respondent witness testified that they dealt with Mr Onno for Ochweri advocates during the negotiation but that the cheques were drawn in the name of the firm of Ochweri and Ngamate Advocates.

Claimants Submissions.

15. The claimant submitted from the onset that he instructed one Mr Onno to act for him in the matter however that he learnt later that the said Mr Onno was masqueraded as an advocate when in fact he was not. Further that the discharge voucher was signed by Mr. F Bosire Ochweri an advocate who was inactive at the time and therefore was not competent to carry out duties of an advocate at the time. In this the claimant relied on the case of **Sheikh Ali Taib V George Elam Wekesa & Another [2012] eklr.**

16. The claimant submitted that he was underpaid by the Respondent and demonstrated how the said salary progress throughout his time at the Respondent. He argued that the Respondent did not adduce any evidence to contravene this fact and therefore prayed that the claim for underpayment be allowed as it is.

17. It was further submitted that the claimant was terminated unfairly when he was suspended and later terminated without subjecting him to any disciplinary process as envisaged under section 41 and 43 of the Employment Act. The claimant then cited the case of **Edward Shabaya V K.K. Security Limited [2014] eklr.**

18. The claimant then submitted that having proved that he was unfairly terminated he ought to be compensated for the unfair termination and be paid as per the claim therein.

Respondent's Submissions.

19. The Respondent on the hand submitted that the claimant's dues were fully settle and therefore this claim is improperly before Court. It was argued that the claimant instructed the firm of Ochweri Ngamate Advocates to pursue his dues which advocates negotiated the claimant dues and arrived at a settlement of Kshs. 34,300 which was paid to the claimant through the said advocates and a discharge voucher duly executed.

20. The Respondent in support of their argument cited the case of **Kenya Commercial Bank Limited V Specialized Engineering company Limited [1982] KLR 485** and submitted that a duly instructed advocate in law has implied general authority to compromise and settle the action and the client should be estopped from renegeing on the said agreement.

21. The Respondent further cited the Supreme Court practice 1976 volume 2 at paragraph 2013 of page 620 which provides for the authority of a solicitor and reinforced by citing the Court of Appeal case of **Kuwinda Rurinja Company V Andikuwinda Holdings & 13 other [2019] eklr.**

22. It was further argued that as much as the Claimant alleged that his advocate was in active, it was his duty to carry out a background check

before instructing him to act on his behalf. He further argued that the Respondent was served with documents from the said firm and dealt with them with presumption that they were duly instructed and were in good standing, in this they cited the case of **Mohoney V East Holford Mining Co. (1875) L.R HL 869**.

23. I have examined the evidence and submissions of the parties herein whereas there was a case between the claimant and the respondents, the claimant has conceded that they instructed one Inno of Ochweri Advocates to pursue the claim on his behalf. There is proof that the said Inno negotiated for the claimant with the respondents and a discharge voucher was finally signed and cheques issued for final settlement as per the respondents documents filed herein.

24. An agreement was signed between the claimant's advocates for Bosire Ochweri and the respondents on 15/2/2018 and the counsel was paid a total of 34,300/= in full settlement of the claim.

25. The claimant admits that F. Bosire Ochweri was his counsel only that he was not competent to transact on his behalf as he had no practicing certificate and that Inno who initially negotiated for him was not an advocate.

26. The claimant having hired a masquerade and an advocate without a practicing certificate to represent him on this claim cannot turn around and renege on what they negotiated for him as it was him who hired them and had a duty to ensure that he is dealing with qualified legal counsel.

27. At the same time, the claimant having presented Onchweri & Co. Advocates as his counsel, the said Law Firm had authority to negotiate the claim on his behalf. He cannot renege on an agreement reached on his behalf by the said counsel.

28. This was the holding in **Kenya Commercial Bank Ltd VS Specialized Engineering Company Ltd (1982) KLR 485 where the court (Harris J)** held as follows;

“A duly instructed advocate has an implied general authority to compromise and settle the action and the client cannot avail himself of any limitation by him of the implied authority to his advocate unless such limitation was brought to the attention of the other side....”

29. This same position is contained in the **Supreme Court Practice 1976 (Vol 2)** paragraph 2013 page 620 and cited in the **Kenya Commercial Bank case (Supra)** above as follows;

“Authority of solicitor – a Solicitor has a general authority to compromise on behalf of his client, if he acts bona fide and not contrary to express negative direction; and it would seem that a solicitor acting as agent for the principal solicitor has the same power – No limitation of the implied authority avails the client as against the other side unless such limitation has been brought to their notice.....”

30. The above cited law being the correct position in law, the claimant herein cannot renege on the negotiated settlement on his behalf by the counsel he hired himself compromising this claim.

31. My finding is that this claim was compromised, settled, money paid to counsel and a discharge agreement signed.

32. There remain no claim to be adjudicated upon.

33. I therefore find the claim without merit.

34. I dismiss it accordingly.

35. There will be no order of costs.

DATED AND DELIVERED IN OPEN COURT THIS 18TH DAY JANUARY, 2022.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Mburu for claimant – present

Githiru for respondent – absent

Court Assistant - Fred