



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 94 OF 2014

KENYA NATIONAL PRIVATE SECURITY WORKERS UNION.....CLAIMANT

VERSUS

MONICA OGUTU.....RESPONDENT

JUDGMENT

1. The Kenya National Private Security Workers Union (the Union) sued Monica Ogutu (the Respondent) alleging that she terminated the employment of Jackson Shisanya Shikokoti (the Grievant) unfairly.
2. The Union also alleged breach of contract.
3. The Respondent filed a Response on 25 June 2014, and this prompted the Union to file Reply to the Response on 22 June 2015.
4. On 18 October 2018, the Union filed an Amended Memorandum of Claim.
5. The Union's case was taken on 29 July 2019 when the Grievant testified and the Respondent's case was adjourned to 9 March 2020.
6. The hearing did not proceed on the scheduled date. In the course of time, the Court requested the parties to attempt an out of court settlement.
7. On 12 March 2021, they entered into a consent in respect to the head of claim for underpayments in the sum of Kshs 112,496/-.
8. When the Cause came up for hearing on the outstanding dispute, the Respondent secured further adjournments and when the Court declined to grant a further adjournment on 18 November 2021, the Respondent's case was closed without her leading any evidence.
9. The Union filed its submissions on 20 December 2021 and the Respondent filed her submissions on 20 January 2022.
10. The Court has considered the pleadings, evidence, and submissions.

Unfair termination of employment

11. The Grievant was employed by the Respondent as a security guard on 3 July 2010.
12. The Grievant testified that his salaries were not paid in time and when she enquired on the arrears on 2011 and 2012, the Respondent became elusive and finally requested him to give her his mpesa number for the payment of the arrears in February 2013 but instead, he received a text instructing him he should look for alternative employment.
13. The Grievant also stated that the Respondent informed him that she had secured guarding services from a security company and that no notice or reasons were given for the termination of employment.
14. The Grievant further testified that attempts to resolve the dispute through the Union and at the Labour Offices failed.
15. The Respondent did not lead any evidence to rebut or controvert the Grievant's testimony under oath.

16. On that account and in consideration of section 10(7) of the Employment Act, 2007, the Court finds that the Respondent unfairly terminated the Grievant's employment.

Compensation

17. The Grievant served the Respondent for about 3-years and factoring in the length of service, the Court is of the view that compensation equivalent to 3-months gross wages would be appropriate (prescribed minimum wage for a security guard in 2013 was Kshs 8,579/-)

Pay in lieu of notice

18. Since the Respondent did not demonstrate that she gave the Grievant written notice, the Court will award the equivalent of 1-month pay in lieu of notice.

Breach of contract

House allowance and salary arrears

19. Considering that the parties compromised the head of claim for underpayments (below the prescribed minimum wages, the Court will treat the heads of claim for house allowance and salary arrears as settled.

Overtime

20. The Union claimed that the Grievant worked overtime without compensation but no tangible evidential foundation to this head of the claim was laid before the Court and relief is declined.

Conclusion and Orders

21. The Court finds and declares that the Respondent unfairly terminated the Grievant's employment and awards him:

(i) Compensation Kshs 25,737/-

(ii) Pay in lieu of notice Kshs 8,579/-

TOTAL **Kshs 34,016/-**

22. The award to attract interest at court rates from date of judgment.

23. The Union to have costs.

Delivered through Microsoft teams, dated and signed in Kisumu on this 23rd February 2022.

Radido Stephen, MCI Arb

Judge

Appearances

For Claimant P.D. Onyango & Co. Advocates

For Respondent Neto Otieno & Co. Advocates

Court Assistant Chrispo Aura