



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO 1930 OF 2016

ZACHARIAH ONDIEKI MARORO.....	1 ST CLAIMANT
ENOSH ONYANGO DWALA.....	2 ND CLAIMANT
AMOS K. MUTHUI.....	3 RD CLAIMANT
DAVID OGUTA.....	4 TH CLAIMANT
GERISITOM N. WANJALA.....	5 TH CLAIMANT
CHRISTOPHER MACHOKA ATEL.....	6 TH CLAIMANT
FRANCESCA INJUSI.....	7 TH CLAIMANT
FRED OMOLLO OBONYO.....	8 TH CLAIMANT
KEMBOI KEVIN.....	9 TH CLAIMANT
ZINEDINE KIRUI.....	10 TH CLAIMANT
ENOCK O. MAYAKA.....	11 TH CLAIMANT
PETER KIRIA.....	12 TH CLAIMANT
JARED M. NYAEGA	13 TH CLAIMANT
SAMMY MUTHOMI.....	14 TH CLAIMANT
REUBEN OIRERE NYABWARI.....	15 TH CLAIMANT
CHARLES LANGAT.....	16 TH CLAIMANT
STEPHEN M. ONTIRI.....	17 TH CLAIMANT
LUCAS NYAKUNDI MATARA.....	18 TH CLAIMANT
DANIEL OMBOKA.....	19 TH CLAIMANT
EDWIN OMWOYO.....	20 TH CLAIMANT
MOHAMMED WAMUKOYA.....	21 ST CLAIMANT

BENJAMIN KOSKEI.....	22 ND CLAIMANT
WILLIAM ODIDI OKOTH.....	23 RD CLAIMANT
MESHACK MAGARA NYANYUKI.....	24 TH CLAIMANT
SAMUEL K. SANG.....	25 TH CLAIMANT
MICHAEL G. MWENGA.....	26 TH CLAIMANT
LABAN NYAUSI.....	27 TH CLAIMANT
DANIEL KIRUI.....	28 TH CLAIMANT
JOSHUA NYANDEGE NYABENDO.....	29 TH CLAIMANT
JOSHUA MAENDE OMUSUGU.....	30 TH CLAIMANT
MARGARET KERUBO NYABUTO.....	31 ST CLAIMANT
JARED ONYANCHA.....	32 ND CLAIMANT
KENNEDY CHAGALA MAJANI.....	33 RD CLAIMANT
EDWIN MUTAI.....	34 TH CLAIMANT
DENNIS KIPKOECH NG'ENO.....	35 TH CLAIMANT
THOMAS ONG'ERA MIGIRO.....	36 TH CLAIMANT
MIKE BII.....	37 TH CLAIMANT
JOSEPH NYACHWEYA NYAGOCHI.....	38 TH CLAIMANT
JAPHETH OBWOGE OMBISI.....	39 TH CLAIMANT
JOSEPH SHIVINA NGWEKWE.....	40 TH CLAIMANT
DUKE NYAKUNDI NYARIKI	41 ST CLAIMANT

VERSUS

LAVINGTON SECURITY LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. By their Memorandum of Claim, as amended on 3rd September 2018, the Claimants have sued the Respondent for unlawful dismissal from employment. The Respondent responded to the Claimants' claim by way of a Response dated 4th December 2018.

2. When the matter came up for hearing, the 1st Claimant, Zachariah Ondieki Maroro testified on his own behalf and on behalf of his co-claimants. The Respondent called its Human Resource Manager, Samuel Ogunde.

The Claimants' Case

3. The Claimants were all employees of the Respondent, having been employed on diverse dates, as security guards.

4. They claim that in the course of their employment, they raised various grievances with the Respondent's management, which were ignored. They add that towards the end of the year 2013, they joined the Kenya National Private Security Workers Union.

5. The Claimants aver that after joining the Union, the Respondent's management commenced a calculated scheme of witch hunt and intimidation against them.

6. The Claimants accuse the Respondent of sacking employees and withholding of salaries. They state that on 5th September 2016, after waiting for their salaries for the month of August 2016 with no direction as to when they would be paid, they went to the Respondent's offices to seek and demand for payment of their salaries.

7. The Claimants claim that the Respondent's Director and other top managers engaged them in discussions for the better part of the day, promising various changes, including allowing the Claimants to join the Union and increasing salaries to statutory levels.

8. The Claimants further claim that as the Respondent's management engaged with them, the Respondent through its supervisors, was busy recruiting temporary or reliever guards to take up the Claimants' duties. By the time the Claimants went back to their assignments, they found that their positions had been taken up by new guards who had been recruited.

9. On 6th September 2016, when the Claimants reported at the Respondent's offices, they were served with notices to show cause, on allegations of absconding duty and participating in an illegal strike. The Claimants term these allegations as fabricated and malicious.

10. The Claimants state that they duly responded to the show cause letters and on 16th September 2016, they started receiving dismissal letters backdated to 6th September 2016.

11. The Claimants aver that the Respondent's action flouted the Constitution, the Employment Act, the tenets of good labour practice and the principles of natural justice in that:

- a) No charges were framed against the Claimants and they were not given ample opportunity to proffer a defence;
- b) The Claimants were denied an opportunity to be heard and to be represented as required by law;
- c) The Respondent acted in a rush and inconsiderate manner to dismiss the Claimants;
- d) All the requirements of the law were thrown out in the haste to dismiss the Claimants.

12. The Claimants therefore seek reinstatement to their employment, in addition to compensatory damages and terminal dues as follows:

1st Claimant: Zachariah Ondieki Maroro

a) 1 month's salary in lieu of notice.....	Kshs. 10,954
b) House allowance for 41 months.....	67,367
c) Overtime for 41 months.....	336,823
d) Unpaid leave for 2 years.....	21,908
e) Underpayment for the year 2015/2016.....	5,488
f) Underpayment for the year 2016/2017.....	1,362
g) 12 months' salary in compensation.....	131,448

2nd Claimant: Enosh Onyango Dwala

a) 1 month's salary in lieu of notice.....	Kshs. 10,954
b) Unpaid salary for 6 days in September 2016.....	2,100
c) House allowance for 28 months.....	46,004
d) Overtime for 28 months.....	230,025
e) Unpaid leave for 2 years.....	21,908
f) Underpayment for the year 2015/2016.....	5,488
g) Underpayment for the year 2016/2017.....	1,808

h) 12 months' salary in compensation.....131,448

3rd Claimant: Amos K. Muthui

a) 1 month's salary in lieu of notice.....Kshs. 10,954.00
b) Unpaid salary for 6 days in September 2016.....2,100.00
c) House allowance for 70 months.....115,010.00
d) Overtime for 70 months.....575,064.00
e) Unpaid leave for 5 months.....4,600.68
f) Underpayment for the year 2015/2016.....5,488.00
g) Underpayment for the year 2016/2017.....1,808.00
h) 12 months' salary in compensation.....131,448.00

4th Claimant: David Oguta

a) month's salary in lieu of notice.....Kshs. 10,954.00
a) Unpaid salary for 6 days in September 2016.....2,100.00
b) House allowance for 53 months.....87,084.30
c) Overtime for 53 months.....435,405.60
d) Unpaid leave for 3 months.....2,738.50
e) Underpayment for the year 2015/2016.....5,488.00
f) Underpayment for the year 2016/2017.....1,808.00
g) 12 months' salary in compensation.....131,448.00

5th Claimant: Gerisitom N. Wanjala

a) 1 month's salary in lieu of notice.....Kshs. 10,954.00
a) Unpaid salary for 6 days in September 2016.....2,100.00
b) House allowance for 12 months.....19,716.00
c) Overtime for 12 months.....98,582.40
d) Underpayment for the year 2015/2016.....5,488.00
e) Underpayment for the year 2016/2017.....1,808.00
f) 12 months' salary in compensation.....131,448.00

6th Claimant: Christopher Machoka Atei

a) 1 month's salary in lieu of notice.....Kshs. 10,954.00
a) Unpaid salary for 6 days in September 2016.....2,100.00
b) House allowance for 50 months.....82,150.00
c) Overtime for 50 months.....410,760.00

d) Unpaid leave for 2 months.....	1,825.00
e) Underpayment for the year 2015/2016.....	5,488.00
f) Underpayment for the year 2016/2017.....	1,808.00
g) 12 months' salary in compensation.....	131,448.00

7th Claimant: Francesca Injusi

a) 1 month's salary in lieu of notice.....	Kshs. 10,954.00
a) Unpaid salary for 6 days in September 2016.....	2,100.00
b) House allowance for 13 months.....	21,360.00
c) Overtime for 13 months.....	106,797.00
d) Unpaid leave for 1 year.....	10,954.00
e) Underpayment for the year 2015/2016.....	7,264.00
f) 12 months' salary in compensation.....	131,448.00

8th Claimant: Fred Omollo Obonyo

a) 1 month's salary in lieu of notice.....	Kshs. 10,954.00
b) House allowance for 43 months.....	70,653.00
c) Overtime for 43 months.....	353,253.00
d) Unpaid leave for 2 years.....	21,908.00
e) Underpayment for the year 2015/2016.....	5,488.00
f) 12 months' salary in compensation.....	131,448.00

9th Claimant: Kemboi Kevin

a) 1 month's salary in lieu of notice.....	Kshs. 10,954.00
b) House allowance for 43 months.....	70,653.00
c) Overtime for 70 months.....	353,253.00
d) Unpaid leave for 2 years.....	21,908.00
e) Underpayment for the year 2015/2016.....	5,488.00
f) 12 months' salary in compensation.....	131,448.00

10th Claimant: Zinedine Kirui

a) 1 month's salary in lieu of notice.....	Kshs. 10,954.00
b) Unpaid salary for 5 days in September 2016.....	1,750.00
c) House allowance for 9 months.....	14,787.00
d) Overtime for 9 months.....	73,936.00
e) Underpayment for the year 2015/2016.....	4,084.00

11th Claimant: Enock O. Mayaka

a) 1 month's salary in lieu of notice.....	Kshs. 10,954.00
b) Unpaid salary for 6 days in September 2016.....	2,100.00
c) House allowance for 84 months.....	138,012.00
d) Overtime for 84 months.....	609,076.00
e) Unpaid leave for 7 years.....	76,678.00
f) Underpayment for the year 2015/2016.....	5,488.00
g) Underpayment for the year 2016/2017.....	1,808.00
h) 12 months' salary in compensation.....	131,448.00

12th Claimant: Peter Kiria

a) 1 month's salary in lieu of notice.....	Kshs. 10,954.00
b) Unpaid salary for 5 days in September 2016.....	1,750.00
c) House allowance for 24 months.....	39,434.00
d) Overtime for 24 months.....	197,164.00
e) Unpaid leave for 1 month.....	912.00
f) Underpayment for the year 2015/2016.....	6,810.00
g) Underpayment for the year 2016/2017.....	1,808.00
h) 12 months' salary in compensation.....	131,448.00

13th Claimant: Jared M. Nyaega

a) 1 month's salary in lieu of notice.....	Kshs. 10,954.00
b) Unpaid salary for 5 days in September 2016.....	1,750.00
c) House allowance for 59 months.....	96,937.00
d) Overtime for 59 months.....	484,967.00
e) Unpaid leave for 4 months.....	3,651.00
f) Underpayment for the year 2015/2016.....	6,810.00
g) Underpayment for the year 2016/2017.....	1,808.00
h) 12 months' salary in compensation.....	131,448.00

14th Claimant: Sammy Muthomi

a) 1 month's salary in lieu of notice.....	Kshs. 10,954.00
b) Unpaid salary for 5 days in September 2016.....	1,750.00
c) House allowance for 24 months.....	39,434.00
d) Overtime for 24 months.....	197,164.00

e) Unpaid leave for 2 years.....	21,908.00
f) Underpayment for the year 2015/2016.....	6,810.00
g) Underpayment for the year 2016/2017.....	1,808.00
h) 12 months' salary in compensation.....	131,448.00

15th Claimant: Reuben Oirere Nyabwari

a) 1 month's salary in lieu of notice.....	Kshs. 10,954.00
b) Unpaid salary for 6 days in September 2016.....	2,100.00
c) House allowance for 108 months.....	177,444.00
d) Overtime for 108 months.....	887,241.00
e) Unpaid leave for 9 months.....	8,216.00
f) Underpayment for the year 2015/2016.....	6,810.00
g) Underpayment for the year 2016/2017.....	1,808.00
h) 12 months' salary in compensation.....	131,448.00

16th Claimant: Charles Langat

a) 1 month's salary in lieu of notice.....	Kshs. 10,954.00
b) Unpaid salary for 6 days in September 2016.....	2,100.00
c) House allowance for 43 months.....	70,653.00
d) Overtime for 43 months.....	353,253.00
e) Unpaid leave for 2 years.....	21,908.00
f) Underpayment for the year 2015/2016.....	6,810.00
g) 12 months' salary in compensation.....	131,448.00

17th Claimant: Stephen M. Ontiri

a) 1 month's salary in lieu of notice.....	Kshs. 10,954.00
b) Unpaid salary for 6 days in September 2016.....	2,100.00
c) House allowance for 24 months.....	39,434.00
d) Overtime for 24 months.....	197,164.00
e) Unpaid leave for 2 year.....	21,908.00
f) Underpayment for the year 2015/2016.....	6,810.00
g) Underpayment for the year 2016/2017.....	1,808.00
h) 12 months' salary in compensation.....	131,448.00

18th Claimant: Lucas Nyakundi Matara

a) 1 month's salary in lieu of notice.....	Kshs. 10,954.00
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b) Unpaid salary for 6 days in September 2016.....	2,100.00
c) House allowance for 16 months.....	26,288.00
d) Overtime for 16 months.....	131,443.00
e) Underpayment for the year 2015/2016.....	6,810.00
f) Underpayment for the year 2016/2017.....	1,808.00
g) 12 months' salary in compensation.....	131,448.00

19th Claimant: Daniel Omboka

a) 1 month's salary in lieu of notice.....	Kshs. 10,954.00
b) Unpaid salary for 6 days in September 2016.....	2,100.00
c) House allowance for 24 months.....	39,434.00
d) Overtime for 24 months.....	197,164.00
e) Underpayment for the year 2015/2016.....	6,810.00
f) 12 months' salary in compensation.....	131,448.00

20th Claimant: Edwin Omwoyo

a) 1 month's salary in lieu of notice.....	Kshs. 10,954.00
b) Unpaid salary for 6 days in September 2016.....	2,100.00
c) House allowance for 17 months.....	27,937.00
d) Overtime for 17 months.....	139,658.00
e) Underpayment for the year 2015/2016.....	6,810.00
f) Underpayment for the year 2016/2017.....	1,808.00
g) 12 months' salary in compensation.....	131,448.00

21st Claimant: Mohammed Wamukoya

a) 1 month's salary in lieu of notice.....	Kshs. 10,954.00
b) House allowance for 43 months.....	70,653.00
c) Overtime for 43 months.....	353,353.00
d) Unpaid leave for 2 years.....	21,908.00
e) Underpayment for the year 2015/2016.....	6,810.00
f) 12 months' salary in compensation.....	131,448.00

22nd Claimant: Benjamin Koskei

a) 1 month's salary in lieu of notice.....	Kshs. 10,954.00
b) Unpaid salary for 6 days in September 2016.....	2,100.00
c) House allowance for 24 months.....	39,432.00

d) Overtime for 24 months.....	197,164.00
e) Underpayment for the year 2015/2016.....	6,810.00
f) Underpayment for the year 2016/2017.....	1,808.00
g) 12 months' salary in compensation.....	131,448.00

23rd Claimant: William Odidi Okoth

a) 1 month's salary in lieu of notice.....	Kshs. 10,954.00
b) Unpaid salary for 6 days in September 2016.....	2,100.00
c) House allowance for 54 months.....	88,727.00
d) Overtime for 54 months.....	443,620.00
e) Unpaid leave for 3 years.....	32,862.00
f) Underpayment for the year 2015/2016.....	6,810.00
g) Underpayment for the year 2016/2017.....	1,808.00
h) 12 months' salary in compensation.....	131,448.00

24th Claimant: Meshack Magara Nyanyuki

a) 1 month's salary in lieu of notice.....	Kshs. 10,954.00
b) Unpaid salary for 6 days in September 2016.....	2,100.00
c) House allowance for 33 months.....	56,925.00
d) Overtime for 33 months.....	284,644.00
e) 12 months' salary in compensation.....	131,448.00

25th Claimant: Samuel K. Sang

a) 1 month's salary in lieu of notice.....	Kshs. 10,954.00
b) House allowance for 52 months.....	85,436.00
c) Overtime for 52 months.....	427,190.00
d) Unpaid leave for 4 years.....	43,816.00
e) Underpayment for the year 2015/2016.....	6,810.00
f) Underpayment for the year 2016/2017.....	1,808.00
g) 12 months' salary in compensation.....	131,448.00

26th Claimant: Michael G. Mwenga

a) 1 month's salary in lieu of notice.....	Kshs. 10,954.00
b) Unpaid salary for 4 days in September 2016.....	4,900.00
c) House allowance for 85 months.....	140,250.00
d) Overtime for 85 months.....	701,199.00

e) Unpaid leave for 2 years.....	22,000.00
f) 12 months' salary in compensation.....	132,000.00

27th Claimant: Laban Nyausi

a) 1 month's salary in lieu of notice.....	Kshs. 10,954.00
b) House allowance for 96 months.....	157,728.00
c) Overtime for 96 months.....	353,253.00
d) Unpaid leave for 3 years.....	32,862.00
e) Underpayment for the year 2015/2016.....	6,810.00
f) Underpayment for the year 2016/2017.....	1,808.00
g) 12 months' salary in compensation.....	131,448.00

28th Claimant: Daniel Kirui

a) 1 month's salary in lieu of notice.....	Kshs. 10,954.00
b) Unpaid salary for 6 days in September 2016.....	5,648.00
c) House allowance for 96 months.....	157,728.00
d) Overtime for 96 months.....	353,253.00
e) Unpaid leave for 3 years.....	32,862.00
f) Underpayment for the year 2015/2016.....	6,810.00
g) Underpayment for the year 2016/2017.....	1,808.00
h) 12 months' salary in compensation.....	131,448.00

29th Claimant: Joshua Nyandegge Nyabengo

a) 1 month's salary in lieu of notice.....	Kshs. 10,954.00
b) Unpaid salary for 6 days in September 2016.....	2,100.00
c) House allowance for 113 months.....	185,659.00
d) Overtime for 113 months.....	928,318.00
e) Unpaid leave for 8 months.....	7,302.00
f) Underpayment for the year 2015/2016.....	6,810.00
g) 12 months' salary in compensation.....	131,448.00

30th Claimant: Joshua Maende Omusugu

a) 1 month's salary in lieu of notice.....	Kshs. 11,500.00
b) Unpaid salary for 6 days in September 2016.....	2,300.00
c) House allowance for 158 months.....	271,550.00
d) Overtime for 158 months.....	1,362,865.00

- e) Unpaid leave for 1 year.....11,500.00
- f) 12 months' salary in compensation.....138,000.00

31st Claimant: Margaret Kerubo Nyabuto

- a) 1 month's salary in lieu of notice.....Kshs. 10,954.00
- b) Unpaid salary for 6 days in September 2016.....2,190.00
- c) House allowance for 39 months.....64,080.00
- d) Overtime for 39 months.....320,392.00
- e) Unpaid leave for 2 years.....21,908.00
- f) Underpayment for the year 2015/2016.....6,810.00
- g) Underpayment for the year 2016/2017.....1,808.00
- h) 12 months' salary in compensation.....131,448.00

32nd Claimant: Jared Onyancha

- a) 1 month's salary in lieu of notice.....Kshs. 10,954.00
- b) Unpaid salary for 24 days in September 2016.....8,760.00
- c) House allowance for 21 months.....34,508.00
- d) Overtime for 21 months.....172,519.00
- e) Underpayment for the year 2015/2016.....6,810.00
- f) Underpayment for the year 2016/2017.....1,808.00
- g) 12 months' salary in compensation.....131,448.00

33rd Claimant: Kennedy Chagala Majani

- a) 1 month's salary in lieu of notice.....Kshs. 11,500.00
- b) Unpaid salary for 19 days in September 2016.....6,650.00
- c) House allowance for 120 months.....207,000.00
- d) Overtime for 120 months.....1,035,072.00
- e) Unpaid leave for 3 years.....34,500.00
- f) 12 months' salary in compensation.....131,448.00

34th Claimant: Edwin Mutai

- a) 1 month's salary in lieu of notice.....Kshs. 10,954.00
- b) House allowance for 32 months.....52,567.00
- c) Overtime for 32 months.....262,886.00
- d) Unpaid leave for 2 years.....21,908.00
- e) Underpayment for the year 2015/2016.....6,810.00

- f) Underpayment for the year 2016/2017.....1,808.00
- g) 12 months' salary in compensation.....138,448.00

35th Claimant: Dennis Kipkoech Ng'eno

- a) 1 month's salary in lieu of notice.....Kshs. 10,954.00
- b) Unpaid salary for 16 days in September 2016.....5,600.00
- c) House allowance for 96 months.....157,728.00
- d) Overtime for 96 months.....788,659.00
- e) Unpaid leave for 3 years.....32,862.00
- f) Underpayment for the year 2015/2016.....6,810.00
- g) Underpayment for the year 2016/2017.....1,808.00
- h) 12 months' salary in compensation.....138,448.00

36th Claimant: Thomas Ong'era Migiro

- a) 1 month's salary in lieu of notice.....Kshs. 10,954.00
- b) Unpaid salary for 20 days in September 2016.....7,000.00
- c) House allowance for 106 months.....174,158.00
- d) Overtime for 106 months.....870,811.00
- e) Unpaid leave for 3 years.....32,862.00
- f) Underpayment for the year 2015/2016.....6,810.00
- g) Underpayment for the year 2016/2017.....1,808.00
- h) 12 months' salary in compensation.....131,448.00

37th Claimant: Mike Bii

- a) 1 month's salary in lieu of notice.....Kshs. 11,500.00
- b) Unpaid salary for 18 days in September 2016.....6,900.00
- c) House allowance for 120 months.....207,000.00
- d) Overtime for 120 months.....1,035,072.00
- e) Unpaid leave for 3 years.....34,500.00
- f) 12 months' salary in compensation.....138,000.00

38th Claimant: Joseph Nyachweya Nyagochi

- a) 1 month's salary in lieu of notice.....Kshs. 10,954.00
- b) Unpaid salary for 24 days in September 2016.....8,400.00
- c) House allowance for 37 months.....60,791.00
- d) Overtime for 37 months.....303,962.00

- e) Underpayment for the year 2015/2016.....6,810.00
- f) Underpayment for the year 2016/2017.....1,808.00
- g) 12 months' salary in compensation.....138,448.00

39th Claimant: Japheth Obwoye Ombisi

- a) 1 month's salary in lieu of notice.....Kshs. 10,954.00
- b) Unpaid salary for 16 days in September 2016.....5,600.00
- c) House allowance for 32 months.....52,567.00
- d) Overtime for 32 months.....262,886.00
- e) Unpaid leave for 2 years.....21,908.00
- f) Underpayment for the year 2015/2016.....6,810.00
- g) Underpayment for the year 2016/2017.....1,808.00
- h) 12 months' salary in compensation.....138,448.00

40th Claimant: John Shivina Ngwekwe

- a) 1 month's salary in lieu of notice.....Kshs. 10,954.00
- b) Unpaid salary for 6 days in September 2016..... 2,100.00
- c) House allowance for 60 months.....98,580.00
- d) Overtime for 60 months.....492,912.00
- e) Unpaid leave for 5 years.....54,770.00
- f) Underpayment for the year 2015/2016.....6,810.00
- g) Underpayment for the year 2016/2017.....1,808.00
- h) 12 months' salary in compensation.....138,448.00

41st Claimant: Duke Nyakundi Nyariki

- a) 1 month's salary in lieu of notice.....Kshs. 10,954.00
- b) Unpaid salary for September 2016.....10,954.00
- c) House allowance for 24 months.....39,434.00
- d) Overtime for 24 months.....197,164.00
- e) Unpaid leave for 2 years.....21,908.00
- f) Underpayment for the year 2015/2016.....6,810.00
- g) Underpayment for the year 2016/2017.....1,808.00
- h) 12 months' salary in compensation.....131,448.00

The Respondent's Case

13. In its Response dated 4th December 2018, the Respondent admits that the Claimants were its employees over diverse periods of time.

14. The Respondent states that the Claimants' employment was terminated after they had participated in an unsanctioned strike.
15. The Respondent further states that with the exception of the 1st Claimant, all the other Claimants were summarily dismissed for leaving their designated work place and participating in an illegal strike.
16. As regards the 1st Claimant, the Respondent states that he had been deployed to guard a client known as the Sub Estate Limited.
17. The Respondent avers that on 26th July 2016, it received a letter from the said client indicating that it had terminated the services of the Respondent on account poor service.
18. On 14th August 2016, the Respondent's Deployment Officer wrote to the Human Resources Manager, stating that the 1st Claimant had been re-deployed but refused to take up duties at the assignment. The 1st Claimant is said to have stated that he could not work during day shift.
19. The 1st Claimant was therefore directed to show cause why his employment should not be terminated. The 1st Claimant is said to have refused to acknowledge or respond to the show cause letter.
20. The 1st Claimant was subsequently dismissed by letter dated 23rd August 2016.
21. The Respondent maintains that the refusal by the 1st Claimant to take up deployment amounted to gross misconduct.
22. Regarding the 2nd to the 41st Claimants, the Respondent states that they were dismissed for participating in an unlawful strike, thus absenting themselves from their respective assignments, without permission from the Respondent.
23. The Respondent avers that the absenteeism caused it financial loss as it had to issue credit notes to the affected clients for services not rendered as particularised hereunder:
- | | |
|---|-------------|
| a) University of Nairobi..... | Kshs. 8,800 |
| b) Technical University..... | 14,400 |
| c) Invesco Assurance Company Limited..... | 1,600 |
| d) Sigona Golf Club..... | 1,100 |
| e) Mitul Court..... | 2,500 |
24. The Respondent further avers that due to their actions, each of the Claimants was issued with a letter to show cause why they had participated in an illegal and unprotected strike, leading to absenteeism.
25. The Respondent adds that the Claimants have not given any explanation as to why they absented themselves from work and have not produced any evidence to support their allegations that they were dismissed on account of union membership.
26. The Respondent accuses the 1st, 23rd and 31st Claimants of marshalling approximately 15 guards to engage in an unlawful demonstration on 5th September 2016. The Respondent denies delaying payment of staff salaries.
27. The Respondent states that out of the 41 Claimants only 2 responded to the show cause letter and their response was found unsatisfactory. The rest refused to acknowledge the show cause letters, prompting their dismissal.
28. The Respondent points out that being a security company, it had to replace the Claimants who had left their assignments without handing over.

Findings and Determination

29. There are two (2) issues for determination in this case:
- Whether the Claimants have made out a case of wrongful dismissal;
 - Whether the Claimants are entitled to the remedies sought.

Wrongful Dismissal?

30. The Claimants were dismissed on the ground of gross misconduct. With regard to the 1st Claimant, it is alleged that he refused to take up an assignment. The 2nd to 41st Claimants were accused of absconding duty.

31. It is however evident that during the time the Claimants are alleged to have engaged in gross misconduct, there were internal grievances between the Claimants and the Respondent. The Court did not see any evidence of efforts made by the Respondent towards addressing the Claimants' grievances. Instead, the Respondent initiated rushed disciplinary processes that were not conclusive.

32. In *Anthony Mkala Chitavi v Malindi Water & Sewerage Co. Limited [2013] eKLR Radido J* held the following:

“The ingredients of procedural fairness....within the Kenyan situation is that the employer should inform the employee as to what charges the employer is contemplating using to dismiss the employee. This gives a concomitant statutory right to be informed to the employee.

Secondly, it would follow naturally that if an employee has a right to be informed of the charges he has a right to a proper opportunity to prepare and to be heard and to present a defence/state his case in person, writing or through a representative or shop floor union representative if possible.

Thirdly, if it is a case of summary dismissal, there is an obligation on the employer to hear and consider any representations by the employee before making the decision to dismiss or give other sanction.”

33. In its decision in *Rebecca Ann Maina and 2 others v Jomo Kenyatta University of Agriculture and Technology [2014] eKLR* this Court held that for an employee to effectively respond to allegations made against them by the employer, they must be given an explicit notice of the charges and allowed adequate time to prepare their defence. This is the import of the procedural fairness requirements of Section 41 of the Employment Act.

34. In the present case, the Respondent did not afford the Claimants adequate opportunity to respond to the allegations made against them. In fact, there is evidence that the Claimants were dismissed before they could even respond to the show cause letters.

35. The charges against the Claimants were therefore not established at the shop floor as required and the ensuing dismissals were substantively and procedurally unfair.

Remedies

36. I therefore award each of the Claimants six (6) months' salary in compensation. In addition, I award each Claimant one (1) months' salary in lieu of notice.

37. The claims for unpaid salary and leave pay fall under terminal dues, which the Respondent's Human Resource Manager, Samuel Ogunde admitted were owed to the Claimants.

38. No evidence was led in support of the claims for house allowance, overtime and underpayment, which therefore fail and are disallowed.

39. Due to the number of Claimants in this claim, coupled with the fact that not all employment records were availed to the Court, I direct the parties to appear before a Labour Officer in Nairobi, within the next seven (7) days, for purposes of tabulation of the dues payable to each Claimant under this judgment. The Respondent is directed to avail all employment records for each Claimant to facilitate the tabulation.

40. The Labour Officer is directed to submit a detailed tabulation to this Court within thirty (30) days from the date of this judgment.

41. The Respondent will meet the costs of this case.

42. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 17TH DAY OF FEBRUARY 2022

LINNET NDOLO

JUDGE

Appearance:

Mr. Upendo h/b Mr. Namada for the Claimants

Miss Mathenge for the Respondent