



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAKURU**

**ELRC CAUSE 301 OF 2016**

SIMON OLE RINKA.....1<sup>ST</sup> CLAIMANT  
JAMES N THEURI.....2<sup>ND</sup> CLAIMANT  
VINCENT E. LOKOBE.....3<sup>RD</sup> CLAIMANT  
HASSAN K. MULONGO.....4<sup>TH</sup> CLAIMANT  
JOSEPH K NDUIKI..... 5<sup>TH</sup> CLAIMANT  
SIMON MWAURA KINYANJUI.....6<sup>TH</sup> CLAIMANT  
PETER WAIRUGU.....7<sup>TH</sup> CLAIMANT  
JOHN MUGUNYI.....8<sup>TH</sup> CLAIMANT  
DAVID KARANJA WANJA.....9<sup>TH</sup> CLAIMANT  
SAMUEL NDUNGU.....10<sup>TH</sup> CLAIMANT  
JAMES N RINKA.....11<sup>TH</sup> CLAIMANT  
WILLIAM NANDI.....12<sup>TH</sup> CLAIMANT

**-VERSUS-**

**BRINKS SECURITY SERVICES LIMITED.....RESPONDENT**

**JUDGMENT**

1. The Claimants herein were all employed in May, 2011 as security guards earning a monthly salary of Kshs. 11,000. That they worked diligently for the Respondent till 31<sup>ST</sup> August, 2014 when their services were terminated abruptly without notice.

2. The Claimants contend that the termination was unfair in the casual way in which the Respondent terminated their services after working for it for over 2 years without any disciplinary issue or even a warning letter issued.

3. The Claimants therefore sought for the following reliefs for each of the Claimants.

**i. A declaration that the Claimants' dismissal was unlawful.**

**ii. The Claimants be paid terminal benefits as set out in paragraph 13(a-j) of the claim.**

- iii. **The Respondent be ordered to compensate the Claimants for unlawful dismissal at the equivalent of 12 months gross salary.**
- iv. **Reinstatement to employment thereof.**
- v. **Costs of this claim.**
- vi. **Interest on the above at Court rates.**
- vii. **The Honourable Court do issue such orders and give such directions as it may deem fit to meet ends of Justice.**

4. The Respondent filed its response to the claim on the 18<sup>th</sup> June, 2018 admitting to employing all the other Claimant save for the 5<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> Claimants herein.

5. It was stated with regard to the other Claimants, that they were employed on 1<sup>st</sup> May, 2012 save for the 12<sup>th</sup> Claimant who was employed on the 1<sup>st</sup> November, 2012 and all served their client Kengen-Olkaria in Naivasha for 2 years till 30<sup>th</sup> April, 2014 when the contract between the Respondent and their client-Kengen came to an end. That they informed the Claimants to report to the Respondent's headquarters office for redeployment however that the Claimants failed to report to their offices in Nairobi and instead left on their own volition in effect terminating their own employment.

6. That upon the said termination, the Claimants were later paid their terminal dues and they signed certificate of release confirming receipt of payment and discharging the Respondent from any further liability.

#### **Hearing.**

7. During hearing the Claimants called Simon Ole Rinka, the first Claimant as their witness who appeared as CW-1. He adopted his witness statement dated 20.7.2021 and in addition stated that the Claimants herein were all employed in May, 2011 all earning a salary of Kshs 11,000 without any overtime worked when they could work over holidays and overtime.

8. He stated that the Respondent did not inform them the reason for the termination and when they reported to the labour office they were never given a response to date.

9. That when they were terminated they were not paid their terminal dues as alleged by the Respondent. He also stated that he was employed on the same day with the 5<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> Respondents.

10. Upon cross examination by **Mutua Advocate**, the witness testified that he is testifying on behalf of the other Claimant and that he was granted authority to do so as is appearing in his document. He avers that he is now a farmer in Nakuru while the other Claimant are not in gainful employment save for the 4<sup>th</sup> Claimant who is working for lavington security and 6<sup>th</sup> Claimant whom he does not know what he does for a living currently.

11. CW-1 admitted that he filed documents for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> 4<sup>th</sup> and 12<sup>th</sup> Claimant. He then stated that they were never given reason for termination neither were they paid their terminal dues.

12. The Respondent on the other hand summoned one witness, **Moses Wekhanya Mauka** as RW-1 who testified that he is the Respondent's branch manager in Eldoret and previously was the manager in Nakuru but left for Eldoret in May, 2021. He then adopted his statement dated 27.9.2018 and produced the documents filed on even date as the Respondent's exhibits.

13. The witness maintained that the 5<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> Claimants were not the Respondent's employees and that they do not have their records.

14. The witness testified further that the Claimants were never terminated as alleged rather that the contract between it and their client-Kengen came to an end and the Claimants directed to report to the head office in Nairobi for redeployment and instead the Claimants failed to report. That later on the Claimants were paid their dues and they signed discharge certificates. The witness then stated that they will issue the Claimants with certificate of service once they clear with the Respondent.

15. Upon cross examination by **Masese Advocate**, RW-1 admitted receiving the letter from the Union however that he forwarded the same to the head office for action, though he contended that the Claimants were not union members. He stated that the Claimants all utilized their leave days and there was none pending.

16. Upon further cross examination, the witness admitted that the Claimants were declared redundant in Naivasha and were to report to Nairobi however they failed to report to Nairobi, voluntarily terminating their employment. The witness maintained that the Claimants were paid their terminal dues however could not tell how much each Claimant received as their parting package.

#### **Respondent's Submissions**

17. The Respondent submitted that the 1<sup>st</sup> Claimant lacked authority to file this suit and swear the verifying Affidavit on behalf of the 2<sup>nd</sup> to

12<sup>th</sup> Claimants in accordance with Order 1 Rule 13 and Order 4 Rule 2 and 3 of the Civil Procedure Rules therefore that the suit is defective. In support of their case they cited the case **Kenya Trypanosomiasis Research Institute V Anthony Kabimba Gusinjilu (Suing for and on behalf of 112 Plaintiffs) [2019] eklr** and the case of **Ndungu Mugoya and 473 others V Stephen Wangombe & 9 others [2005] eklr**.

18. The Respondent then submitted that, the 5<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> Claimants are strangers and that they have never employed them. They argued that if the said Claimants had indeed been employed by it then they ought to have produced evidence of their employment just like the other Claimants or at the very least appear during hearing to defend their position. The Respondent then urged this Court to dismiss the claim of these Claimant on that premise.

19. On whether the other Claimants were unfairly terminated, it was submitted that the Claimants were not terminated as alleged rather that the contract between the Respondent and their client, Kengen-Olkaria ended automatically declaring the Claimant redundant and that efforts to have to have the Claimants report to Nairobi office for redeployment was in vain. It was argued that the failure by the Claimant to report to headquarter for redeployment cannot amount to unlawful termination rather that the Claimant left employment on their own volition and therefore are not entitled to the reliefs sought.

20. The Claimants on the other hand did not file any submission in support of their case.

21. I have examined all evidence and submissions filed by parties herein. The Claimants testified that they were all employees of the Respondent and the Respondents confirmed employing all Claimants save for the 5<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> Claimants. In relation to the 5<sup>th</sup>, 10<sup>th</sup> & 11<sup>th</sup> Claimants, the 1<sup>st</sup> Claimant testified that he was employed on the same date with them.

22. The 1<sup>st</sup> Claimant also produced a payslip and contract for the 10<sup>th</sup> Claimant who the Respondent denied employing.

23. The Respondents apart from denying employing the said Claimants, they didn't produce their master roll showing the records held by them showing the exclusion of the 5<sup>th</sup>, 10<sup>th</sup> & 11<sup>th</sup> Claimants. Their evidence was a mere denial.

24. Having considered the evidence of CW1 who had authority to testify on behalf of the other Claimants I find that all the Claimants were employed by the Respondents herein as testified.

25. From the appointment letter issued to the Claimants, they were employed as guards to work for the Respondents. There was no indication that they were being employed to serve any particular assignment as stated by the Respondents.

26. The Respondents submitted that the Claimants were to specifically serve at Kengen-Olkaria in Naivasha which is not an item in their contract.

27. The Respondents also stated that their contract with Kengen expired and therefore the Claimants could not continue serving.

28. The Respondents however never produced their contract with Kengen to show the expiry of their engagement.

29. Other than the said contention that the contract expired, the Respondents also aver that they asked the Claimants to report for deployment to another assignment at their headquarters and they declined.

30. No such instruction to report to Nairobi was exhibited before this Court.

31. The contention then that the Claimants absconded duty is therefore not true and I reject it.

32. I find that the Claimants were terminated by the Respondents. There is also no indication that the Claimants were subjected to any fair hearing before dismissal as envisaged under Section 41 of the Employment Act 2007.

33. It is therefore my finding that the Claimants dismissal was unfair and unjustified as provided for under Section 45(2) of the Employment Act 2007 which states as follows;

**“45. (1).....**

**(2) A termination of employment is unfair if the employer fails to prove-**

**(a) that the reason for the termination is valid;**

**(b) that the reason for the termination is a fair reason-**

**(i) related to the employee's conduct, capacity or compatibility; or**

**(ii) based on the operational requirements of the employer; and**

**(c) that the employment was terminated in accordance with fair procedure”.**

34. Having found the Claimants dismissal unfair and unjustified, I award them as follows;

**1. 6 months salary as compensation for the unlawful and unfair termination = 6 x 11,000 = 66,000/=**

**2. Uniform refund = 4,800/=**

**TOTAL – 70,800/= for each Claimant less statutory deduction**

**3. Issuance of a certificate of service.**

**4. The Respondents will pay cost of this suit plus interest at Court rate with effect from the date of this Judgment.**

**DATED AND DELIVERED IN OPEN COURT THIS 30TH DAY OF MARCH, 2022.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Mrs. Mutua for Respondent – present

Claimants – absent

Court Assistant - Fred