



**Too v Lavington Security Limited (Cause 995 of 2017)
[2022] KEELRC 1743 (KLR) (23 June 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1743 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 995 OF 2017
MN NDUMA, J
JUNE 23, 2022**

BETWEEN

MERCY CHEBET TOO CLAIMANT

AND

LAVINGTON SECURITY LIMITED RESPONDENT

JUDGMENT

1. The suit was filed on May 30, 2017 by the claimant seeking for the following reliefs: -
 - a. A declaration that the claimant was unfairly terminated.
 - b. Compensation for unfair termination
12 months @ 13,500 Kshs 162,000/=
 - c. Salary for the month of February, 2017... Kshs 13,500/=
 - d. One month salary in lieu of notice.....Kshs 13,500/=
 - e. Refund of uniform deductions @ 500/= per month
 - f. 2015 – 3 months]
 - g. 2016 – 12 months]
 - h. 2017 – 2 months] Kshs 8,500/=
 - i. Payment in lieu of leave not taken
 - j. 2015/2016 – Kshs 13,500/=
2016/2017 – Kshs 13,500/=Kshs 27,000/=



- k. Unpaid House allowance for 17 months
@ 6,000/= (6,000 x 7)Kshs 102,000/=
- Total: Kshs 326,500/=
- (1)) Interest on (b), (c), (f), (g), (h), (i), (j) and (k) from date of termination to the date of payment in full.
 - (2) General and Exemplary damages as compensation for torture, mental and psychological injury and agony subjected to the claimant.
 - (3) Costs of the suit.
2. C.W.1 testified in support of the suit that she was verbally employed by the respondent as a security Guard on October 1, 2015. That she worked continuously until February 8, 2017 when she was verbally dismissed from employment by a manager upon presenting a sick sheet and a note from hospital giving her 14 days sick off. That the manager Mr. Kennedy tore the sick sheet, took possession of her uniform and told her to go home and not return again. That the sick sheet was from Amurt Health Care Centre. That she was not given a show cause letter nor was she given a hearing and /or any valid reason for the dismissal. That she had no disciplinary issues and /or warning as alleged by the respondent or at all. That the dismissal was unlawful and unfair and she is entitled to the terminal benefits set out in the statement of claim including one-month salary for February, 2017, in the sum of Kshs 13,500; one-month salary in lieu of notice Kshs 13,500; Kshs 8,500 being refund for uniform contributions; Kshs 27,700 in lieu of untaken leave for 2 years; unpaid house allowance for 17 months in the sum of Kshs (6000 x 17) Kshs 102,000 and Damages for unlawful dismissal.
 3. The respondent called R.W.1 Samuel Obada who denied the claim stating that the claimant was employed on October 1, 2015 and was based at Westlands Kenrail Towers as a Security Guard until 17th February, 2017. That the client complained that the claimant reported to work late and was abusive. Claimant was transferred to Waiyaki Way where she worked until February 11, 2017 when she absconded work. That her phone was switched off and she was replaced. That she re-appeared on February 27, 2017, when she was given a notice to show cause which she declined to receive and disappeared and the respondent did not see her again until they were served with summons.
 4. Under cross-examination, R.W.1 said the respondent had no warning letters written to the claimant; that he did not have a copy of the alleged show cause letter written to the claimant; that he had no report of alleged complaints by the claimant; that no disciplinary hearing took place and that he had no copy of a letter inviting the claimant to a disciplinary hearing.
 5. R.W.1 alleged that they had given her a letter dated February 13, 2017 which was not produced before Court.
 6. R.W.1 also said that the claimant was not given any letter of appointment. R.W.1 confirmed that the claimant was paid Kshs 13,500 monthly salary and National Social Security Fund deductions were remitted. That the claimant was summarily dismissed for absconding office. R.W.1 stated that the supervisor who dealt with the claimant had tried to reach her on her mobile phone but was not available to testify.
 7. R.W.1 said they had no contact details of the claimant including her phone number. That the claimant worked for one year and 3 months and her last day at work was February 11, 2017. That the claimant was paid for days worked until February 11, 2017. That the suit be dismissed.
 8. The parties filed written submissions and the issues for determination



are: -

- a. Whether the claimant was unlawfully dismissed from work or she absconded duty.
 - b. Whether the claimant is entitled to the reliefs sought.
8. In terms of section 43(1) and (2) the employer has the onus of proving that the employment of an employee was terminated for a valid reason. In the present case, the claimant presented credible evidence that she was verbally sent away from work by a supervisor named Kennedy, when she presented to him a sick sheet and an off-duty note for two (2) weeks from a doctor. The claimant presented copies of the sick sheet giving her 14 days off dated 13th February, 2017 before Court. In terms of the sick sheet from Amurt Health Care Centre, the claimant was to resume work on 26th February, 2017. Indeed R.W.1 confirmed that the claimant despite having been sent away, her uniform taken, did return to work on 27th February, 2017.
 9. The claimant also presented a report from the Ministry of Labour by the claimant dated 3rd March, 2017 in which the claimant reported that she had been unlawfully dismissed from work and the labour office demanded that the respondent settle her dues promptly including notice pay; salary for February, 2017, uniform refund and payment in lieu of leave days.
 10. R.W.1 failed to present any tangible evidence to rebut the evidence by C.W.1.
 11. R.W.1 failed to demonstrate that they had given the claimant a show cause letter for alleged offences by her. R.W.1 failed to show that the claimant was invited to any disciplinary hearing. Equally, R.W.1 failed to demonstrate that the claimant had any disciplinary record including any complaints by the client she served and/or any warning letters allegedly given to her.
 12. The Court finds that the claimant has established to the satisfaction of the Court in terms of section 47(5) of the *Employment Act*, 2007, that she was wrongfully summarily dismissed from work and the respondent having failed to demonstrate that it had any valid reason to summarily dismiss her and that it had followed a fair procedure to summarily dismiss her from work, the Court finds that the summary dismissal of the claimant was unlawful and unfair and in violation of sections 36, 41, 43 and 45 of the Act and that the claimant is entitled to compensation in terms of section 49(1) (c) and 4 of the Act.
 13. In this regard the claimant had served the respondent for a period of one year and 3 months. The claimant had no adverse record at work. The claimant was victimized for falling sick and her sick sheet was torn by her supervisor and she was summarily dismissed. The claimant lost prospects of continued employment and suffered loss of income unlawfully and without notice; the claimant was not compensated for the loss and was not paid any terminal benefits upon the summary dismissal. These are aggravating circumstances. The court relies on the case of *Nicholas Otinyu Muruka -vs- Equity Bank Limited* [2013] eKLR; Court of Appeal decision in *Jared Aimba -vs- Fina Bank Limited* and the case of *Rebecca Ann Maina & 2 others -vs- Jomo Kenyatta University of Agriculture and Technology* (2014) eKLR, to find this a suitable case to award the claimant the equivalent of six months salary in compensation for the unlawful and unfair dismissal in the sum of Kshs (13,500 x 6) – Kshs 81,000.
 14. R.W.1 did not rebut the evidence by the claimant that she had not taken leave and was entitled to payment in lieu of leave days not taken. It has also been established that the claimant was not given notice and or paid in lieu of notice; R.W.1 also did not rebut the evidence by the claimant that she was not paid 15% house allowance which is a minimum condition of work and the Court awards the claimant terminal benefits claimed but limited to one year and 3 months as follows: -



- a. Kshs 13,500 in lieu of one-month notice.
 - b. Kshs 8,500 being uniform refund.
 - c. Kshs 18,875 in lieu of leave days not taken.
 - d. 3,375 being unpaid salary for February, 2017.
 - e. Kshs 30, 375 being unpaid house allowance for 15 months.
Total award: Kshs 152,250
 - f. Interest at Court rates from date of judgment till payment in full.
 - (f) Costs of the suit.
14. The claimant has not claimed Certificate of Service but is to be provided with one within 30 days if the respondent has not done so yet in terms of the law. Service gratuity in terms of the security services, order was not claimed and so we shall not grant it.
15. It so ordered.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 23RD DAY OF JUNE, 2022.

MATHEWS N. NDUMA

JUDGE

Appearances

M/s Kasiva for claimant

M/s Nyambega for Respondent

Ekale – Court Assistant

