



**Murere v Brinks Security Services Ltd (Cause 187 of 2016)  
[2022] KEELRC 1563 (KLR) (2 June 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1563 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
CAUSE 187 OF 2016  
HS WASILWA, J  
JUNE 2, 2022**

**BETWEEN**

**NAHASHON ONYANGO MURERE ..... CLAIMANT**

**AND**

**BRINKS SECURITY SERVICES LTD ..... RESPONDENT**

**JUDGMENT**

1. The claimant filed his Memorandum of claim dated May 19, 2016 on the May 24, 2016 claiming to have been unfairly terminated by the respondent. The claimant prays for the following remedies: -
  - a) A declaration that the claimant's dismissal was unlawful.
  - b) The claimant be paid terminal benefits as set out in paragraph 11(a-f) above.
  - c) The respondent be ordered to compensate the claimants for unlawful dismissal at the equivalent of Twelve (12) months gross salary.
  - d) Reinstatement to employment thereof.
  - e) Costs of this claim.
  - f) Interest on the above at Court rates.
  - g) The honourable court do issue such orders and give such direction as it may deem fit to meet ends to justice.
2. The summary of the claimant's case is that he was employed by the respondent in May, 2011 as its security guard till July 7, 2014 when his services were terminated.
3. It is averred that the termination was actuated by malice and was not preceded by any notice or disciplinary hearing.



4. It is averred that the respondent failed to provide a breakdown of the claimant's terminal benefits calculations in spite of request.
5. The respondent entered appearance and filed a response to the claim on the March 31, 2017 admitting to employing the claimant though that the employment was from May 1, 2012 to November 15, 2013 when he absented himself from duty for two consecutive months without any lawful excuse or permission thereof. It is as a result of this that the respondent assumed the claimant had deserted employment.
6. The respondent however, states that on January 16, 2014, the claimant went to the respondent's employment and did his clearance and returned the respondent property and thereafter obtained his pay for the 11 days worked in the month of November and his terminal dues which comprised of 21 pending leave days for the year 2012/2013 and a refund of uniform cost of Kshs 2,400 which had been withheld, therefore that he was paid his terminal dues full.
7. It is averred that, after collecting his dues the claimant signed a certificate of release on the July 7, 2014 absolving the respondent from any further claim.
8. It was further averred that the claim herein has been filed as an afterthought aimed at only vexing the respondent.
9. The respondent thus contends that the claimant absconded duty and was not terminated as alleged. The allegations of malice were also denied.

### **Hearing.**

10. The hearing of this cause was conducted on the March 22, 2022 where the claimant testified as CW-1 and adopted his witness statement dated May 19, 2016 that basically reiterated the claim and produced the documents as his exhibits. He added that he was employed in May 2012 and worked for the respondent till November, 2015 when his services were terminated. He avers that his salary was not paid on time and when he followed up with the respondent he was advised by the respondent to resign but he refused and instead took up the matter with the labour office.
11. Upon cross examination by Mutua Advocate, the witness testified that he was still an employee of the respondent for the year 2014/2015. He admitted to signing the released certificate dated July 7, 2014 and admitted to receiving Kshs 13,693 as his terminal dues however that he did not read the contents of the released certificate. He further stated that he was advised by the Respondent to resign in October, 2014 but he refused. He also confirmed that he was paid his uniform refund.
12. Upon further cross examination the witness confirmed that the records before court indicate that his employment began on May 1, 2012 and there was no other contract signed thereafter. He also confirmed that his clearance form is dated January 16, 2014.
13. On re-examination the witness testified and maintained that he worked till July, 2015. He avers that he was not the one that wrote the date in the release certificate. He then avers that he does not know how to read and write and could not therefore understand the contents of the letter.
14. The respondent called its branch manager, Moses Wachanya, as its RW-1 who adopted his witness statement dated October 9, 2016 and produced the documents as Respondent's exhibits. He added that the claimant was employed on the May 1, 2012 and absconded duty on the November 15, 2013 for two months only to return on January 16, 2014 and cleared with them. A demand was made to the respondent on the May 29, 2014 and the claimant was paid all his dues and he confirmed the same by signing a release certificate dated July 7, 2014.



15. Upon cross examination by Masese Advocate, the witness testified that when the claimant absconded duty they did not get in touch with him as he could not be traced. He also admitted that they received the letter from the labour office however they did not act on it as the claimant had already been released. He then confirmed that the claimant was released on 16<sup>th</sup> January, 2014 and received his dues on July 7, 2014.
16. Parties were directed to file submission; however, none was on record at the time of writing this Judgement.
17. I have examined all the evidence and submissions of the parties herein. From the evidence of the claimant he was employed in May 2012 and worked till November 2015.
18. This evidence is however disputed because he admitted that he signed the release certificate dated July 7, 2014 and admitted being paid 13,693 as his terminal dues.
19. His contention then that he worked for respondent in 2015 is not true. It is my finding from the evidence adduced that the claimant worked for the respondent from May 2012 to 2014 January.
20. On July 7, 2014, the respondent signed a certificate of release between him and the respondent and in it he indicated that:

“I hereby willingly and without any undue pressure or at all, completely release and discharge my said former employer from all claims, demands, agreements, liabilities and proceedings of every nature or descriptions that I may have against the said former employer arising from my contract of service now terminated. I will not now or in future make any claim against the said employer.....”

21. The claimant having signed a release letter exonerating the respondent then and in future of any liability upon being paid his terminal dues, he cannot now turn around and lay a claim against the respondents.
22. In my view the claimant by his own words exonerated the respondent of any liability and that stand to date.
23. I find the claim unmerited and I dismiss it accordingly.
24. There will be no order of costs.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 2<sup>ND</sup> DAY OF JUNE, 2022.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Mutua for Respondent – present

Claimant – Absent

Court Assistant - Fred

