



**Kenya National Private Security Workers Union v Inter Security Services Limited
(Cause 1318 of 2016) [2022] KEELRC 1765 (KLR) (28 July 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1765 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1318 OF 2016**

**L NDOLO, J
JULY 28, 2022**

**BETWEEN
KENYA NATIONAL PRIVATE SECURITY WORKERS UNION CLAIMANT
AND
INTER SECURITY SERVICES LIMITED RESPONDENT**

JUDGMENT

1. The claimant is a trade union duly registered under the [Labour Relations Act](#), 2007, with the mandate to represent employee interests in the private security sector.
2. The claimant brings the present claim on behalf of five (5) Grievants namely; Richard Ochieng, Absalom Obiero, Joanes Onyango, Patrick Ombalo and Patrick Matiti, who were employees of the respondent and members of the claimant Union.
3. The claim is contained in a memorandum of claim dated July 4, 2016 and filed in court on even date. The respondent filed a reply on August 31, 2016.

The Claimant's Case

4. The claimant states that the grievants were employed by the respondent as security guards on diverse dates as follows:
 - a. Richard Ochieng: August 2, 2003;
 - b. Absalom Obiero: January 1, 1988;
 - c. Joanes Onyango: January 1, 1988;
 - d. Patrick Ombalo: December 5, 1989;
 - e. Patrick Matiti: August 1, 2001.



5. The Grievants worked for the respondent until July 23, 2015 when they were issued with retirement notices, which notices were to take effect on September 1, 2015.
6. The claimant faulted the notices, stating that they were issued in complete disregard to the respondent's policy and government directive on the retirement age.
7. The claimant reported a trade dispute to the Ministry of Labour and Social Protection in accordance with the provisions of section 62 of the [Labour Relations Act](#), upon which a Conciliator was appointed.
8. On May 24, 2016 the Conciliator issued a certificate of an unresolved dispute pursuant to the provisions of section 69 (b) of the [Labour Relations Act](#), prompting the filing of the instant claim.
9. On April 11, 2018, a partial consent was recorded before O.N Makau J by which judgment was entered in favour of the Grievants in the sum of Kshs. 599,629 broken down as follows:
 - a. Richard Ochieng: Kshs. 76,548
 - b. Absalom Obiero: Kshs. 133,906
 - c. Patrick Ombalo Owira: Kshs. 127,580
 - d. Johnes Onyango Mburu: Kshs. 172,234
 - e. Patrick Matiti: Kshs. 89,307.
10. The agreed amounts were subsequently settled in two instalments on May 7, 2018 and June 13, 2018. The consent left a single outstanding for determination being, leave days not taken, on which the parties were directed to file written submissions. At the time of writing this judgment, no submissions had been filed on behalf of the claimant.

The Respondent's Case

11. In its reply dated and filed in court on August 31, 2016, the respondent admits having engaged the Grievants as pleaded in the memorandum of claim. The respondent however maintains that the subsequent retirement was lawful and that all the Grievants were duly served with the requisite notices as required under the law.
12. In its submissions, the respondent maintains that the claim for leave days not taken is not viable as the Grievants were allowed to proceed on leave when applicable, in accordance with the provisions of section 28 of the [Employment Act](#), 2007 and where such leave days were not taken there was adequate compensation as evidenced by the copies of payroll from Equity and Cooperative Banks which clearly indicate payment in lieu of leave.
13. The respondent further submits that no evidence was adduced by the claimant confirming that the said amounts remain due and owing to the Grievants.

Determination

14. It is not in dispute that the Grievants were employed by the respondent on diverse dates between 1988 and 2003. It is also not in dispute that the respondent issued the Grievants with retirement notices on diverse dates between June 30, 2015 and July 27, 2015.
15. It is on record that the parties entered a consent on April 11, 2018, leaving the only outstanding issue as accrued leave days. This then is the only issue for determination by the Court.



16. The claimant did not provide any particulars on this claim nor did it adduce any evidence in support thereof. In addition, the claimant did not bother to file submissions as directed by the Court.
17. The result is that the claim for leave pay was not proved and is dismissed.
18. Each party will bear their own costs.
19. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 28TH DAY OF JULY 2022

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JUDGE

Appearance:

Miss Wanyama for the claimant

Mr. Okulo for the respondent

