



**Ogolla v Securex Agencies (K) Limited (Cause 219 of 2016)  
[2022] KEELRC 1350 (KLR) (15 July 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1350 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE 219 OF 2016  
B ONGAYA, J  
JULY 15, 2022**

**BETWEEN**

**ALFRED OUMA OGOLLA ..... CLAIMANT**

**AND**

**SECUREX AGENCIES (K) LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The claimant filed the memorandum of claim on March 23, 2017 through Odhiambo & Company Advocates. The claimant's case is that he was employed by the respondent as a Driver on July 15, 2012 but, issued with a letter of appointment dated January 1, 2014. He received the letter of summary dismissal on August 31, 2015. The reason for termination per the letter of summary dismissal was failure to report on duty since July 29, 2015 without permission or any other lawful cause. The letter further stated that on further follow up it had been established that the claimant had been arrested by the police on July 29, 2015 for a cognizable offence and detained in police cells for more than 14 days and upon release disciplinary hearing was held on August 31, 2015 and the committee made its deliberation. Further, the minutes of the hearing were in the claimant's knowledge. The letter stated that the claimant was being summarily dismissed per section 44(4) (a) and (f) of the *Employment Act*, 2007 and also because his actions were in violation of the respondent's policy and procedure on attendance of work. He was dismissed from work effective August 31, 2015 and he would be paid days worked plus overtime, leave earned but not taken, uniform refund and, certificate of service to issue. The final terminal dues were calculated as follows:
  - a. 6-months leave Kshs 9, 810.00.
  - b. Uniform refund 7-months Kshs 1, 400.00.
  - c. Uniform Refund 30-months Kshs 15, 000.00.



- d. Salary March, February, and March claims less 3-days Kshs 2, 790.69 paid in July Kshs. 13, 158.00.
  - e. Gross payable Kshs 55, 489.90.
  - f. Less tax Kshs 2, 278.00.
  - g. Net amount Kshs 53, 211.00.
2. The claimant signed for the amount on 28.11.2015 and the cheque for the Kshs 53, 211.00 is dated 28.11.2015.
  3. The claimant's case is that as at termination he earned Kshs 25, 021.00 per month and he claimed against the respondent as follows:
    - a. Salary in lieu of notice Kshs 25, 021.00.
    - b. Terminal benefits Kshs 37, 532.00.
    - c. Compensation for 12 months for un-procedural redundancy termination of employment Kshs 300, 252.00.
    - d. Unpaid leave for 3 years at Kshs 9, 180.00 per year Kshs 75, 063.00.
    - e. Total claim Kshs 437, 868.00.
  4. The claimant prayed for judgment against the respondent for:
    - a. A declaration that the respondent un-procedurally and unfairly summarily dismissed the claimant from employment.
    - b. Payment of Kshs 437, 868.00 as stated in paragraph 7 above.
    - c. Costs and incidental to the claim.
    - d. Interest on (a) and (b) above from the time of filing the claim.
  5. The respondent filed the reply to the statement of claim on April 20, 2017 through Taibjee & Bhalla Advocates. The respondent admitted employing the claimant as a Driver effective July 15, 2012 but denied an appointment letter was issued on January 1, 2014. The respondent admitted that it issued the letter of summary dismissal on August 31, 2015. It was the respondent's case that the claimant breached the contract of employment when he failed to report on duty from July 29, 2015 without lawful cause or permission. The respondent did not know the claimant's whereabouts but upon a follow up it was established that the claimant had been arrested for being in possession of narcotics and detained at police cells for more than 14-days. The claimant was accorded a fair hearing per the minutes of disciplinary hearing and he was dismissed on account of gross misconduct per the letter of summary dismissal. He was paid all his terminal dues by the exhibited cheque. The respondent denied that as at dismissal the claimant's monthly payment was Kshs. 25, 021.00 and the respondent prayed that the suit be dismissed with costs.
  6. The claimant testified to support his case and the respondent's witness (RW) was John Mark Muriithi, the Branch Manager at the time of hearing of the suit and the Technical Branch Manager as at the time of the claimant's summary dismissal. The final submissions were filed for the parties.
  7. The court has considered all the material on record and makes pertinent findings as follows:



1. There is no dispute that the respondent employed the claimant as a Driver and the employment contract ended by way of the letter of summary dismissal. The claimant testified about his salary thus, “I confirm my salary was ranging between Kshs 24, 000.00 – 25, 000.00 on termination. I agree my salary was Kshs 18, 000.00 net. Deductions were shown in the payslip. The respondent kept records.” He again testified that his salary was around Kshs 21, 000.00 and further, his salary was Kshs 18, 911.00, gross Kshs 21, 000.00. In absence of any other material, the court returns that the claimant’s monthly salary remained at large and completely unknown and his testimony was contradictory to the pleaded Kshs 25, 021.00 per month. The salary is found to be within the figures as per final dues computed by the respondent.
2. The evidence is that on July 28, 2015 the claimant was in company of his assigned emergency response crew when his assigned motor vehicle was suddenly stopped by the police officers from Changamwe Police Station. The vehicle was searched together with the crew and it was discovered that some rolls of cannabis sativa had been concealed by the crew in the vehicle and in their belongings. The claimant and the crew were arrested and escorted to Changamwe Police Station. While denying that he did not attend the disciplinary hearing on August 31, 2015, the evidence was that the claimant signed against his service number 20484 as the Driver (which number also appears in his letter of appointment dated January 21, 2014 and the claimant confirmed the number to belong to him per his testimony). The court has no reason to doubt that the claimant attended accompanied with the Crew Commander and crew and, they all signed the minutes. The allegations levelled at the meeting were about the arrest by police with possession of narcotics while on duty. The claimant and co-accused, per the minutes, had nothing to state at the disciplinary hearing and the summary dismissal followed. The claimant testified that he reported back to work on August 25, 2015 and was verbally told that the contract of employment had ended and he received the termination letter in December, 2015. The Court finds that his testimony cannot be trusted at all because he signed for the final dues cheque on December 7, 2015 which was dated November 28, 2015 and further signed for final dues calculations on November 28, 2015. The Court considers that even if he was paid final dues in December, 2015 and the dismissal letter received December, 2015, there is no reason to doubt the respondent’s account that a disciplinary hearing took place on 31.08.2015. The claimant confirmed that he was arrested and charged on allegations of possession of bhang. The court returns that the evidence is that the respondent has established that the reason for the dismissal existed as at termination per section 43 of the Act. Further, the reason related to the respondent’s operational requirements as well as the claimant’s conduct, capacity and compatibility per section 45 of the *Employment Act*, 2007. The respondent has established the reasons justifying the dismissal per section 47(5) of the Act as submitted for the respondent. The respondent’s submissions are upheld in that regard. There is no reason to doubt that consequential to the claimant’s arrest the respondent’s business was disrupted and it suffered a great deal. The claimant is found to have fully contributed to his summary dismissal and is undeserving of a finding of unfair termination or award of compensation under section 49 of the Act. The court further finds that the claim for compensation appears to be on account of unfair redundancy but which has not been established at all as the case was about summary dismissal. The court has also found that the base for any award was not established as the claimant failed to show the exact amount of the monthly salary.
3. While finding that the reason for termination was established, the court considers that under section 44(4)(a) absence without leave or good cause amounted to gross misconduct for which under section 44(1) the respondent was entitled to dismiss without notice or with shorter



notice than was agreed in the contract of service. Thus, while the claimant was not given a show cause notice, the court returns that it was sufficient that he was heard. Further, while the respondent became aware of the arrest, it cannot be said that the reason was good to justify the absence from work. The records for the criminal proceedings are not filed and the court considers that the claimant's and respondent's testimony tallies that he was arrested on account of possession of bhang. The procedure adopted by the respondent leading to the termination cannot be described as unfair and the reason was established.

4. The claimant was paid leave days at Kshs 9, 810.00 and by pleading and evidence he has not explained particulars of leave as claimed in the suit. In any event the claim was in the nature of a continuing injury whose cessation was the effective date of the summary dismissal and the 12 months of limitation for the cause of action had lapsed by the date the suit was filed.
5. The court finds that the claimant's suit is therefore liable to dismissal as all claims and remedies as made are found not justified.

8. In conclusion the suit is hereby dismissed with costs.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT MOMBASA THIS FRIDAY 15<sup>TH</sup> JULY, 2022.**

**BYRAM ONGAYA**

**JUDGE**

