



Kenya National Private Security Workers Union v Apex Security Group (Cause E003 of 2021) [2022] KEELRC 12746 (KLR) (28 September 2022) (Judgment)

Neutral citation: [2022] KEELRC 12746 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CAUSE E003 OF 2021
DKN MARETE, J
SEPTEMBER 28, 2022

BETWEEN
KENYA NATIONAL PRIVATE SECURITY WORKERS UNION CLAIMANT
AND
APEX SECURITY GROUP RESPONDENT

JUDGMENT

1. This matter was originated by way of a memorandum of claim dated January 27, 2021. The issue in dispute is therein cited as;
Unfair/unlawful dismissal of Titus Muraguri Warothe and Martin Wahome Kibui.
2. The matter is not defended, or at all.
3. The claimant's case is that the parties have no recognition agreement but fall under the purview and sector of the claimant union. She can therefore represent the grievants per section 54(1) of the [Labour Relations Act](#).
4. The claimant's further case is that the grievants were employed on November 17, 2018 as security guards at a basic salary of kshs 8,400.00 per month. On employment, they were posted to Othaya Referral Hospital station for work. They thus worked until December 31, 2019 when their services were terminated after a one year and one month stint.
5. The claimants other case is that their stint of employment involved the following features;12 hours work without compensation -6pm-6amNo salary raisePublic holidays not granted or compensatedAnnual leave not granted or compensatedNo house allowance.They were subjected to unlawful termination of employment on December 31, 2019.Their termination was verbal and without warning or cause.They earned kshs 8,400.00 per month.There were no statutory deduction



remissions. Their enquiry on unlawful termination of employment was ignored by the respondent. On February 18, 2020 the matter was referred to conciliation but this did not bear fruit.

6. She prays thus;
 - i. The two grievants to be reinstated back to their employment without any loss of benefits.
 - ii. The two grievants to be paid the salaries they could have earned since the date of the unlawful dismissal up until the date of the judgment.
 - iii. An order directing the respondent to issue the grievants with a certificate of services as provided under section 51 of the *Employment Act*, 2007.
7. This matter is not defended, or at all. This is despite service.
8. The claimant in their written submissions dated August 6, 2021 reiterates the claim and relies on sections 41, 43, and 45 of the *Employment Act*, 2007, that spells out the ingredients for lawful termination of employment as follows; The reasons for termination must be adduced failure of which this shall be deemed unfair termination of employment. The officer must be afforded a hearing through a disciplinary process where he has the liberty to bring in a representative from the shop floor.
9. It is the claimant's submissions that all these steps were omitted and therefore a case of unlawful termination of employment ensues.
10. The issues for determination are;
 1. Whether the termination of the employment of the grievants by the respondent was wrongful, unfair and unlawful.
 2. Whether the claimant is entitled to the reliefs sought.
 3. Who bears the costs of the claim.
11. The 1st issue for determination is whether the termination of the employment of the grievants by the respondent was wrongful, unfair and unlawful. The claimant narrates, testifies and submits a case of unlawful termination of employment.
12. In the absence of a defence, the claimant's case takes sway. The claimant's case remains uncontroverted. I therefore find a case of unlawful termination of employment and hold as such.
13. The 2nd issue for determination is whether the claimant is entitled to the relief sought. She is. Having established a case of unlawful termination of employment, she becomes entitled to the relief sought.
14. I am therefore inclined to allow the claim and order relief as follows;
 - i. That the grievants be and are hereby reinstated to employment without loss of emoluments, benefits and position.
 - ii. The grievants be and are hereby ordered to report back to work on September 29, 2022 at 800 hours.
 - iii. Ten (10) months compensation for unlawful termination of employment – kshs 8,400 x 10 = kshs 84,000.00 for each of the grievants.
 - iv. The cost of the claim shall be borne by the respondent.

DATED AND DELIVERED AT NYERI THIS 28TH DAY OF SEPTEMBER 2022.



D.K.NJAGI MARETE

JUDGE

Appearances

SUBPARA 1.

Mr. Josphat Mati for the claimant union

SUBPARA 2.

No appearance for the Respondent.

