



REPUBLIC OF KENYA



**KENYA LAW**  
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**Wandor v Riley Falcon Security Services Ltd (Cause 497 of 2017)  
[2022] KEELRC 13411 (KLR) (6 December 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13411 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
CAUSE 497 OF 2017  
HS WASILWA, J  
DECEMBER 6, 2022**

**BETWEEN**

**DAVID OTIENO WANDOR ..... CLAIMANT**

**AND**

**RILEY FALCON SECURITY SERVICES LTD ..... RESPONDENT**

**JUDGMENT**

1. The Claimant instituted this claim against the Respondent vide a Memorandum of Claim dated 20<sup>th</sup> December, 2017, complaining of being unfairly terminated and seeking for compensation for the alleged unfair termination. He seeks the following reliefs; -
  - a. One-month salary in lieu of Notice.
  - b. 11 days worked for in the month of May 2015.
  - c. Annual leave for 3 years and 6 months.
  - d. Underpayment for the 3 years and 6 months worked.
  - e. Compensation for unfair termination in accordance with section 49(1)(c) of the [Employment Act](#).
  - f. Certificate of service.
  - g. Costs of this suit.
  - h. Uniform refund of Kshs 4200.
2. The summary of the Claimant's case is that he was employed by the Respondent sometimes on 7<sup>th</sup> January, 2012 as a day watchman earning a monthly salary of Kshs 5200. That he reported to work everyday at 6am and clocked out at 6pm clocking 12 hours every day without overtime pay.



3. He however states that he was granted 4 days off duty each month but was not granted any leave days contrary to provisions of section 28 of the *Employment Act*, despite him requesting to go for the said leave.
4. The circumstances leading to his termination is that on the 4<sup>th</sup> June, 2015 he was asked by the manager of Eco-bank to guard their ATM in addition to National Bank of Kenya ATM which the Respondent had instructed him to guard which he refused on the basis that he had not been given such instructions by his employer.
5. He states that he proceeded for his off duty the next day on 5<sup>th</sup> June, 2015 and while on off duty he received a report from the Respondent's controller, one Mr. Paskal that the client, National Bank of Kenya, had withdrawn instruction and he would therefore not work for them anymore. He was then directed to report to the Respondent's office at section 58 Nakuru in the morning of 6<sup>th</sup> June, 2015 for further direction.
6. Upon reporting to the said office, the manager, Mr Olima informed him that he would be guarding Catholic Diocese of Nakuru(CDN) and that he would be reporting to the new assignment at 2 pm same day. Before he could report to the new work station, he was advised that his work station had been changed and he as to be transferred to Nyahururu to work at Kenya Commercial Bank effective the next day. A deployment letter was send to the manager which indicated that the Claimant was to be deployed as a reliever to go to Kenya Commercial Bank at Nyahururu Njabini area and the assignment was to be undertaken the next day. Being a family man, with children in school, he Claimant requested for more time to organize his family and see how to transfer them to Nyahururu, however the request for more time fell on deaf ears and instead he was given an ultimatum to either report to Nyahururu the next day of loose his job.
7. Caught up between and a rock and hard place, the Claimant rushed to the labour office to stop the looming termination and seeking to be granted time to relocate his family to Nyahururu. However, the matter was not resolved with the urgency the Claimant anticipated and therefore he was terminated from employment on the 6<sup>th</sup> June, 2015 though the letter of terminated is one dated 2<sup>nd</sup> July, 2015.
8. The Respondent entered appearance and filed a response to claim on the 7<sup>th</sup> March, 2018 denying all the contents of the claim and in addition averring that the Claimant left the Respondent's employ on his volition upon being informed that he was to be transferred to another station.
9. It was further stated that there is another suit pending being Nakuru ELRC Cause Number 402 of 2015 K.N.P.S *Workers Union v Riley Falcon* which touches on the Claimant as a grievant.
10. During hearing, the Claimant testified as CW-1 and adopted his witness statement of 10<sup>th</sup> June, 2022 which basically reiterated the contents of the claim. He also adopted the documents filed together with the claim herein.
11. The Respondent on the other hand did not participate in the hearing of this cause despite being served by Michael Wandfa Busolo, a Court process serve, with a hearing notice dated 14<sup>th</sup> June, 2022 for the hearing on the 27<sup>th</sup> July, 2022.

#### **Claimant's submissions.**

12. The Claimant submitted on two issues; whether the Claimant was unlawfully and unfairly terminated and whether the Claimant is entitled to the reliefs sought.



13. On the first issue, it was submitted that the Respondent failed to adhere to both substantive and procedural fairness in terminating the services of the Claimant as was held in Walter Ogal Anuro v Teachers Services Commission [2013] eKLR.
14. It is submitted that the reason for termination was because the Claimant requested for more time to relocate his family with school going children but instead the Respondent fired him. He also argued that the Respondent failed to subject him to any disciplinary process when the same is mandatory as provided for under the Employment Act. To support his case they relied on the case of Alphonse Machage Mwachanya V Operation 680 Limited [2013] eKLR, where the Court summarised the legal fairness requirements for termination of employment on grounds of misconduct, poor performance and physical incapacity as set out under section 41 of the Employment Act.
15. Accordingly, that the reason for termination was not justified and without being subjected to any disciplinary procedure, the termination was out rightly unfair as provided for under section 45 of the Employment Act. To further support his case, he relied on the case of Mary Chemweno Kiptui V Kenya Pipeline Company Limited [2014] eKLR.
16. On the second issue, whether the reliefs sought should be allowed, the Claimant submitted that he has made out his case to the required standard and without any opposing evidence by the Respondent, the claim should be allowed as prayed.
17. I have examined all evidence and submissions filed and adduced by the Claimant as this matter proceeded ex parte.
18. The Claimant testified before Court indicating the circumstances under which he was terminated. The Claimant's case remained uncontroverted.
19. There is no evidence to contradict the Claimants evidence as to the reasons and manner in which he was terminated.
20. I therefore find the Claimant was terminated unfairly and without valid reasons.
21. As for the remedies sought, I find for the Claimant and I award him as follows;
  1. 1 month salary in lieu of notice 11,623.16/=
  2. 1 year leave not paid as pleaded for 2014/2015 = 11,512.80/=
  3. Underpayment of wages as pleaded 155,946.80/=
  4. 11 days worked for May 2015 and not paid = 5,108.40/=
  5. 10 months' salary as compensation for unfair and unlawful termination = 116,231/=Total Awarded = 300,422.16/=  
Less statutory deductions
6. Claimant to be issued with a Certificate of Service.
7. The Respondent will pay costs of this suit plus interest at Court rates with effect from the date of this Judgment.

**DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 6<sup>TH</sup> DAY OF DECEMBER, 2022.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**



**In the presence of:**

Opar for Claimant – present

Respondents – absent

Court Assistant - Fred

