



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 214 OF 2016

EMMANUEL OWINO OGUTU.....CLAIMANT

v

G4S SECURITY SERVICES KENYA LTD.....RESPONDENT

JUDGMENT

1. The Issues for determination in this Cause as identified by Emmanuel Owino Ogutu (the Claimant) are:

- (i) Whether the Claimant was unlawfully terminated from his employment contrary to the provisions of the Employment Act?
- (ii) Whether the Claimant is entitled to the reliefs sought?
- (iii) Who is to bear the cost of the suit?

2. The Cause was heard on 9 October 2018 and 10 December 2020.

3. The Claimant and a Human Resource Officer with G4S Security Services Kenya Ltd (the Respondent) testified.

4. The Claimant filed his submissions on 25 January 2021 (should have been filed and served before 10 January 2021), while the Respondent filed its submissions on 15 February 2021.

Unfair termination of employment

Procedural fairness

5. The Respondent suspended the Claimant through a letter dated 19 September 2015. Served with the suspension letter was a Notice of Disciplinary Enquiry/Hearing form. The allegation given was

Intentional failure to hand over cash collection sheets and cashier in good time.

6. The Respondent informed the Claimant of a right to be accompanied during the hearing.

7. The Claimant made a written response to the suspension.

8. The Claimant was then invited to a disciplinary hearing which was held on 30 September 2015, and was informed of dismissal through a letter dated 22 October 2015.

9. The Court is satisfied that the Respondent alerted the Claimant of the allegations to confront and further afforded him an opportunity to be heard as contemplated by sections 35(1) and 41 of the Employment Act, 2007.

Substantive fairness

10. By dint of sections 43 and 45 of the Employment Act, 2007, the Respondent had the burden of proving and proving as valid and fair the reasons for dismissing the Claimant.

11. In an endeavour to discharge the burden, the Respondent called a witness. Records were also produced.

12. The Claimant admitted in his written response during the investigations stage that he lost Kshs 2,000/- which came into his possession because of his work/ duties.

13. During the disciplinary hearing, the Claimant conceded that he did not make a prompt report of the loss because a friend had promised to loan him some money which he intended to use to replace the Kshs 2000/-.

14. The Claimant's duties expected honesty. He did not inform his supervisors that money that had come into his possession due to the nature of his duties and that it had gotten lost if indeed, that was the case.

15. The Court finds that the Respondent had valid and fair reasons to dismiss the Claimant.

Underpayment of wages

16. The Claimant alleged that he was underpaid during the entire employment period but did not lead any evidence whether the underpayments arose from payment of wages below the prescribed gazetted minimum wage or contractually agreed rates.

17. Relief is declined.

Severance pay

18. The Claimant's separation with the Respondent was not on account of redundancy, and therefore severance pay is not payable.

September 2015 to July 2016 pay

19. The Claimant was on suspension from 19 September 2015. He was dismissed on 22 October 2015. He pleaded that he was not paid wages from September 2015 to July 2016. No evidence was led on this head of the claim.

20. However, if the Claimant was asking for wages from the time of suspension to dismissal, the Court notes that the Respondent produced a schedule showing that the Claimant was paid all his dues up to the date of separation, but because of outstanding liabilities, he got nil payment.

21. Nothing, therefore, turns on this head of the claim.

Conclusion and Orders

22. In light of the foregoing, the Court finds no merit in the Cause. It is dismissed with costs.

Delivered through Microsoft teams, dated and signed in Kisumu on this 3rd day of March 2021.

Radido Stephen, MCI Arb

Judge

Appearances

For Claimant Omondi, Abande & Co. Advocates

For Respondent Hamilton Harrison & Matthews Advocates

Court Assistant Chrispo Aura