



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAKURU

ELRC CAUSE 315 OF 2015

JOSEPH ONUNGU OMANWA.....1ST CLAIMANT

RAPHAEL TEMESI OKORE.....2ND CLAIMANT

EVANS OMANDI MACHUNGA.....3RD CLAIMANT

-VERSUS-

WORLD CLASS SECURITY LIMITED.....RESPONDENT

JUDGMENT

1. The Claimants herein by a Memorandum of Claim dated 22nd October, 2015 and filed on even date, sued the Respondent for alleged unfair termination and for compensation for the unfair termination.

2. The 1st and 3rd Claimants were employed by the Respondent on the 1st July, 2015 as operation managers, while the 2nd Claimant was employed as a night security guard for a contract of 3 months. The 1st and 3rd claimant were designated in Nakuru earning Kshs 9,000 and Kshs 12500 respectively while the 2nd Claimant was dispatched to Kayole earning Kshs 7,000 per month.

3. It is stated that the 1st claimant clocked in at 5:30am to assign the day guards duties until 9:30 pm after assigning the night guards duties, working about 16 hours a day, while the 2nd and 3rd Claimant clocked in at 6pm to 6am working 3 hours overtime every day of the week without any off/rest day which the respondent did not compensate them for.

4. It is the claimants' case that only the 3rd claimant was paid Kshs. 7500 as July salary, while the other claimants were not paid a single cent.

5. The 1st claimant states that he had lent the Respondent Kshs 36,000 which monies were to be refunded together with his salary which monies were never refunded. Also that in line of duty the 1st claimant expended at least Kshs.500 per day to meet his patrol expenses.

6. The 1st claimant was verbally fired on the 4th September, 2015, the 2nd claimant was verbally fired on the 25th July, 2015 while the 3rd Claimant was dismissed from work on 23rd September, 2015.

7. The claimants therefore prays for judgment against the Respondent for a declaration that their dismissal was unfair, unlawful and for the Respondent to be compelled to pay each of the Claimants:-

a) One Month salary in lieu of Notice

b) Arrears

c) Damages for breach

d) Overtime

e) Off days

- f) Gratuity**
- g) Leave**
- h) Patrol expenses**
- i) Deposits made**
- j) Compensation under section 49(1)(c) of the Employment Act.**
- k) Costs.**

8. The Respondent were served with the pleadings and Summons on the 25th January, 2016 as per the affidavit of service filed on the 23rd August, 2016, and further Mention and Hearing Notices by way of advertisement, however the Respondent did not enter Appearance and or defend this Suit, therefore the claim herein proceeded as undefended Claim.

9. This matter then proceeded for hearing on the 22nd July, 2021 where the 2nd Claimant, **Raphael Temesi Okore**, sought to adopt his witness statement dated 12th April, 2021 and filed on the 22nd July, 2021 which basically reiterated the claim herein.

10. During the said hearing the 1st and 3rd claimant withdrew their claims against the Respondent, therefore this matter proceeded between the 2nd claimant and the Respondent.

11. The claimant herein opted not to file any submissions.

12. I have examined the evidence and submissions of the claimant herein. The claimants exhibited some employment contracts to prove that he had been employed by the respondent.

13. The respondents didn't call any evidence to controvert the claimant's case and therefore the 2nd claimant proved that he had been employed by the respondents.

14. It is not clear how he was dismissed but he indicated that he was verbally dismissed and without payment of their salaries.

15. I find that the 2nd claimant was dismissed by the respondents and without due process. I therefore find that the claimants are entitled to payment of;

2ND CLAIMANT

1. 1 month salary in lieu of notice.

2. 8 month's salary as compensation for unfair termination = 8 x 13,029.62 = 104, 236.96/=

3. Leave of kshs.2, 869.13 as prayed

TOTAL = 120,135.71/=

4. The respondents will pay costs of this suit plus interest at court rates with effect from the date of this Judgment.

DATED AND DELIVERED IN OPEN COURT THIS 25TH DAY OF NOVEMBER, 2021.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Maragia for Claimant – present

Respondents – absent

Court assistant - Fred