

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

CAUSE NO. 2552 OF 2016

KENYA NATIONAL PRIVATE SECURITY

WORKERS UNION.....CLAIMANT

VERSUS

MONGOOSE PROPERTY CARE LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant herein sued the Respondent vide a suit dated 13th December 2016 on behalf of the Grievant Mr. Patrick Shiemi for alleged unfair termination and refusal to pay terminal dues. The Claimant averred that the Grievant was employed by the Respondent as a Security Guard on 5th October 2013 in the capacity of a Security Guard at an initial salary of Kshs. 9,000/- only which was below the stipulated Government wage of Kshs. 12,221/-. The Claimant averred that the Respondent did not bother to pay overtime, house allowance, public holiday and other statutory payments. The Claimant averred that the Grievant worked diligently until 27th January 2016 when he was ordered to return the uniform without any reasons. The Grievant called the manager the following day to inquire as to why his uniform was taken from him by the supervisor, he was informed that the said instructions had come from him. The Claimant averred that the Grievant reported the matter to the union who wrote to the Respondent on 19th February 2016 proposing for a meeting on the 27th February 2016 to deliberate on the issues. The Claimant averred that the Respondent was uncooperative and refused to meet the union and that forced it to report the dispute to the Ministry of Labour vide the Union's letter of 24th March 2016. It averred that Mr. Kilonzi of the Labour Office – Nyayo House was appointed to arbitrate the dispute. The Claimant averred that despite invitation severally the Respondent failed to attend the conciliation meetings scheduled by the Ministry of Labour.

2. The Claimant avers that the Conciliator issued a certificate in terms of Section 69(b) of the Labour Relations Act and the Claimant accordingly moved this Court. The Claimant avers the Grievant was earning Kshs. 10,600/- a month and that his termination was on account of joining a union of his choice. It was averred the Grievant was denied an opportunity to be heard and to be represented as the law requires and that the Respondent acted in a rash and extremely inconsiderate manner. The Claimant thus sought on behalf of the Grievant compensation for the unfair and unlawful termination for the period he has stayed out of employment. The Claimant also sought one month's salary in lieu of notice – Kshs. 10,912/-, underpayment of wages Kshs. 62,40/- for 20 months (2013 to 2015), Kshs. 12,968/- for 8 months (May 2015 to 27th January 2016), 12 months salary as compensation for unfair termination, house allowance Kshs. 32,736/- for October 2013 to 1st May 2015; Kshs. 14,665/- for May 2015 to 27th January 2016, unpaid standard overtime – Kshs. 126,560/- for 20 months and Kshs. 56,704/- for 8 months, certificate of service, leave for 2015 – Kshs. 12,221/- as well as costs and interest on the suit.

3. The Respondent denied that the Grievant was unfairly terminated and averred that the Grievant deserted employment. The Respondent averred that the averments in the claim were fabrications as the Grievant deserted employment. It averred the allegations that the Grievant was terminated for joining a union as spurious and baseless. The Respondent averred that the Grievant is not entitled to any damages as compensation at all. It thus sought the dismissal of the claim with costs to the Respondent.

4. The Claimant sued on behalf of the Grievant who testified before Radido J. that he was dismissed for joining the union. He stated that the Union reported a trade dispute to the Cabinet Secretary and a Conciliator appointed. He testified that the Conciliator called parties to the conciliation meetings and the Respondent failed to attend whereupon the Conciliator issued a certificate. He said that his salary was 10,000/- which was later increased to 14,600/- in 2014. He stated that on 27th January 2016 he was at Information House and the supervisor came at 2.00am and asked the Grievant to return his uniform. He stated that he gave in the uniform and was instructed to go home and in the morning when he called his manager he was notified that his services had been terminated. He stated there was no notice of the intended termination. He testified that he returned the second set of uniform and was not accorded a disciplinary hearing. He thus sought the prayers in the claim. When the matter came up for defence hearing before me, the defence did not show up and the defence case was accordingly closed.

5. The Claimant's Grievant other than asserting that he was dismissed because of joining a union of his choice did not attach Form S which would have shown he had joined the Union neither did he attach any receipts for the membership he alleges he had in the Claimant Union. The Grievant did not even bother to attach the relevant Wages Orders to show the alleged underpayments. No evidence was shown in respect to overtime which he called standard overtime in his claim. As the Claimant did not prove the termination was unfair as there was no letter to the Respondent from the Claimant protesting his termination only a complain made a few months later. In the premises the claim is not proved to the required standard and is dismissed albeit with no order as to costs.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 15TH DAY OF DECEMBER 2021

Nzioki wa Makau

JUDGE