



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

CAUSE NO. 558 OF 2016

ELPHAS OMONDI OTIENO.....CLAIMANT

VERSUS

COLLINDALE SECURITY LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant vide the memorandum of claim filed on 7th April 2016 seeks judgement against the Respondent for:

- a. A declaration that the Claimant's termination of employment was unlawful and unfair;
- b. The Claimant to be paid his terminal dues of Kshs. 256,452/-
- c. The costs and interest of the Claim.
- d. The Claimant to be issued with a Certificate of service in accordance with Section 51 of the Employment Act, 2007.
- e. This Honourable Court to issue such orders and give such directions as it may deem fit to meet the ends of justice.

The Claimant averred that he was employed by the Respondent as a Security Guard on 3rd September 2014 and later promoted to the position of a crew commander. The Claimant averred that at the time of his termination, he was earning a salary of Kshs. 14,652/- per month. He avers that he served the Respondent diligently and honourably before he was unlawfully and unfairly terminated from his employment contrary to Section 41 of the Employment Act. He avers that he was involved in a motorbike accident on his way to work on 20th November 2015 and the Respondent took him to Mbagathi District Hospital for treatment. He averred that he was treated and the Respondent catered for the medical expenses and the Hospital recommended a one-month bedrest for the Claimant. The Claimant averred that he gave the sick sheet to one of the Respondent's assignment at Khoja Mosque. The Claimant averred that he called Mr. Maina in charge of the control room and asked the Respondent to pick the sick sheet from the assignment at Khoja Mosque. He averred that he reported on 21st December 2015 only to be given a letter dated 5th December 2015 terminating his services on account of desertion of duties. The Claimant contended that since the termination was meted out devoid of procedures the termination was unlawful and unjustified. He thus sought his terminal benefits as enumerated above.

2. The Claimant's Memorandum of Claim is opposed by the Respondent's Memorandum of Reply dated and filed on 10th August 2018.

3. The Claimant testified as did the Respondent's witness, its Human Resource Manager, Mrs. Caroline Odhiambo. The Claimant testified that he did not abscond duty and that he was terminated from employment when he returned from a one month's sick leave following a motorbike accident that he had been involved in and treated for on 20th November 2015. He stated the medical expenses at Mbagathi Hospital were catered for by the Respondent. He said the Respondent was aware that he was out on sick leave since he had called Mr. Maina and informed him of the same. He stated that he left the sick sheet at Khoja Mosque where the Respondent had an assignment. He testified that when he returned to work on 21st December 2015 he received a letter terming him a deserter. He stated he was not heard prior to his termination and he thus sought the payment of the dues per his claim.

4. The Respondent's witness Mrs. Caroline Odhiambo testified that she was the Human Resource Manager of the Respondent. She stated that the Claimant deserted duty for quite a while. She said the Claimant did not notify the Respondent of his predicament and did not present any sick leave. She stated that she only became aware of the sick leave after the Claimant filed the case. She testified that the Claimant cleared with the company and was paid. She stated the certificate of service was prepared but the Claimant declined to pick it and filed suit. She testified that the Respondent tried to authenticate the sick sheet and that the Hospital did not give any support. In cross-examination she

stated the Claimant was a deserter and that the Respondent tried to get him. She said there was evidence but confirmed it was not filed. She stated that she gave the Claimant opportunity to explain himself and that he had no proof he was authorised to go on sick off. She testified that she saw the sick off when the suit was filed. In re-exam she stated that she tried to call the Claimant on his cellphone but he did not pick up the calls.

5. The parties filed submissions and the Claimant submitted that the following issues arise for determination by this Honourable Court:

- a) Whether the Claimant absconded duty or was dismissed from employment?
- b) Whether the Claimant's termination was unlawful, unfair and unjustifiable?
- c) Whether the Claimant is entitled to the terminal benefits and dues sought?

6. The Claimant submitted that the dismissal was while he was on sick off. He submits that he had availed the sick sheet from Mbagathi Hospital which had recommended that the Claimant take a one-month bed rest.

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8. The

It is so ordered.

Dated and delivered at Nairobi this 14th day of December 2021

Nzioki wa Makau

JUDGE