



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 74 OF 2018

EVANS OMONDI JUMA.....CLAIMANT

VERSUS

RILEY FALCON SECURITY SERVICES LTD.....RESPONDENT

JUDGMENT

1. This Cause was heard on 25 January 2021, when Evans Omondi Juma (the Claimant) testified and on 17 March 2021, when a Deputy Operations Manager with Riley Falcon Security Services Ltd (the Respondent) testified.

2. Pursuant to directions by the Court, the Claimant filed his submissions on 15 April 2021, while the Respondent filed its submissions on 17 May 2021.

3. The Court has considered the pleadings, evidence and submissions and adopts the Issues as identified by the parties in the submissions, being:

(i) Unfair termination of employment.

(ii) Appropriate relief.

Unfair termination of employment Procedural fairness

4. The Respondent employed the Claimant as a security guard on or around 1 February 2012.

5. On 16 March 2017, the Respondent issued a show-cause notice to the Claimant, and the allegation was that he was found drunk in the workplace on the night of 15 March 2017. The notice requested the Claimant to respond within 48 hours.

6. The Claimant responded through an undated letter, and he admitted that the client whose property he was deployed to had reported him to the Respondent as being drunk and that he indeed had taken alcohol earlier in the day. The Claimant sought forgiveness.

7. On the same day (16 March 2017), the Respondent invited the Claimant to a disciplinary hearing to be held on 22 March 2017. The Claimant was informed of the right to be accompanied during the hearing.

8. The Claimant attended the hearing (the Respondent produced copies of minutes of the hearing), admitted he had taken alcohol, and the panel hearing the case recommended severe warning and refresher training.

9. The Respondent issued a severe warning to the Claimant on 22 March 2017.

10. From the above, the Court is satisfied that the Claimant was afforded an opportunity to be heard as contemplated by section 41 of the Employment Act, 2007.

Substantive fairness

11. By dint of section 47(5) of the Employment Act, 2007, the Claimant had the initial burden of demonstrating that an unfair termination of employment had occurred.

12. Upon discharging the burden, the Respondent would be expected to discharge the burden imposed upon employers by sections 43 and 45 of the Employment Act, 2007, by showing that there were valid and fair reasons to terminate the employment relationship.

13. The Respondent's assertions were that upon being issued with a warning letter and being instructed to attend a refresher training, the Claimant stopped reporting to work, and he could not be reached.

14. The Claimant did not disclose the name of the person who allegedly dismissed him or informed him not to report to work or that his services were no longer required.

15. These disclosures were necessary in order for the Claimant to satisfy the low-threshold burden of showing that an unfair termination of employment had occurred.

16. The Court observes that in the Memorandum of Claim and witness statement, which was adopted as part of the evidence, the Claimant had merely challenged the process leading to separation (procedural fairness) but did not make any reference to the reasons.

17. The Claimant did not advert to the allegation of being found drunk during his oral testimony.

18. The Claimant did not discharge the burden expected of him by section 45(7) of the Employment Act, 2007 and is therefore not entitled to any compensation or damages.

Breach of contract

19. The Claimant pleaded that he was entitled to earned 5-years leave amounting to Kshs 70,000/-. No foundational evidence to this alleged breach of contract was set out in the filed witness statement or during oral testimony.

20. The Court declines to award any relief under this head of the claim.

Terminal benefits

21. The Claimant did not lead any evidence as to the terminal dues or benefits he was eligible for either under contract or statute, and relief is declined.

Conclusion and Orders

22. The Court finds no merit in the Cause, and it is dismissed with costs.

Delivered through Microsoft teams, dated and signed in Kisumu on this 8th day of December 2021.

Radido Stephen, MCI Arb

Judge

Appearances

For Claimant Odhiambo Ouma & Co. Advocates

For Respondent Ogejo, Omboto & Kijala Advocates LLP

Court Assistant Chrispo Aura