



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 401 OF 2015

(Before Hon. Justice Mathews N. Nduma)

JOEL NYAMWEYA.....CLAIMANT

VERSUS

BEDROCK SECURITY GROUP LIMITED.....RESPONDENT

JUDGMENT

1. In the Amended Memorandum of Claim filed on 15th January 2017 the Claimant prays for compensation for unlawful and unfair dismissal and payment of terminal benefits set out under paragraph 11 of the Memorandum of Claim. The suit is not defended. The facts of the case as per the testimony of CW1 is that the Claimant was employed by the Respondent on 1st January 2012 as a Security Guard.

2. The Claimant worked continuously until the 31st May 2014 earning a salary of Kshs.5,560 per month. The Claimant was dismissed from employment on 31st May 2014 without notice, notice to show cause or any disciplinary hearing. At the time the Claimant was guarding Telkom Kenya Limited Kisii.

3. The Claimant reported the dispute to the Ministry of Labour who wrote a letter of demand on his behalf. The Claimant produced exhibits attached to the Memorandum of Claim. The letter of complaint by the Ministry of Labour dated 3rd February 2015 and notice of intention to prosecute dated 28th April 2015 and a copy of cheque written in favour of the claimant by the Respondent dated 8th May 2015 for a sum of Kshs.16,980 after the letter of demand was written to the Respondent. Claimant testified that the cheque was dishonoured. Claimant stated that he worked from 6 am to 6 pm in the evening from Sunday to Monday. That he was not paid overtime. That he never went on leave or paid in lieu of leave. The Claimant sought to be paid Kshs.508,831.81 as set out in the claim.

Determination

4. The court is satisfied that the Claimant has proved on a balance of probabilities that he worked for the Respondent for a period of over two (2) years. He was underpaid contrary to the minimum wage set out in Legal Notice no. 197/2013. That he was unlawfully and unfairly dismissed from work for no valid reason and without the Respondent following a fair procedure.

5. That he was not granted annual leave for the two years worked. That he was not paid overtime for 20 public holidays worked. That he was not granted 104 weekly rest days. That he was not paid salary for two (2) months. That he was not paid for overtime worked during the period he served the Respondent and was not paid severance pay upon dismissal. The Claimant was summarily dismissed without notice and was not paid in lieu of notice.

6. The court finds that the claimant has proved that he is owed and is awarded terminal benefits as follows:

- (a) One month salary in lieu of notice Kshs. 11,633.60.
- (b) Underpayments in terms of Legal Notice No. 197/2013, at the rate of Kshs. 5,833.60 per month for two years Kshs. 70,137.60
- (c) Arrear salary for two (2) months Kshs. 23,267.20.
- (d) Payment in lieu of two years annual leave Kshs. 14,162.40.
- (e) Payment in lieu of 104 weekly rest days at Kshs. 674.40 per rest day Kshs. 70,137.60

(f) Payment for 20 public holidays worked without payment of double pay Kshs. 13,488.00.

(g) Statutory gratuity in terms of the Security Service Wages Order calculated at 18 days salary for two (2) completed years of service Kshs. 13,960.30.

(h) Overtime of 4 hours for everyday worked for two years in the sum of Kshs. 179,184.

Total terminal benefits Kshs. 395,970.70.

Compensation

7. In terms of *Section 49(1) (c) and (4) of the Employment Act, 2007*, the Claimant is entitled to compensation for the unlawful and unfair termination of employment. In this regard, the Claimant served for a period of more than two years. He did not contribute to the summary dismissal. He was not paid any terminal benefits upon dismissal. He was not compensated for the loss of employment. The Claimant suffered loss and damage. The Claimant was underpaid throughout the two years period and was not granted his minimum basic rights of annual leave and weekly off days which is an aggravating circumstance.

8. The court has considered the case of **Mary Chemweno Kiptui –vs- Kenya Pipeline** and the Claimant has equivalent of six (6) months' salary in compensation for the unlawful and unfair dismissal of employment in the sum of Kshs.69,798.

9. In the final analysis judgement is entered in favour of the Claimant as against the Respondent as follows:-

(a) Equivalent of six month's salary in compensation Kshs.69,798

(b) One month salary in lieu of notice Kshs.11,633

(c) Kshs.70,137.60 in under payments

(d) Kshs.23,267.20 arrear salary

(e) Kshs.14,162.40 in lieu of leave days not taken

(f) Kshs.70,137.60 in lieu of weekly rest days not taken

(g) Ksh.13,488 in lieu of 20 public holidays worked and no paid double salary

(h) Kshs.13,900.30 for gratuity for two years completed service.

(i) Kshs.179,184 overtime

Total amount Kshs.522,417.50

(j) Interest at court rates from date of judgment till payment in full in respect of (a) above and from date of filing suit in respect of (b) to (i) above.

(k) Costs of the suit.

Judgment Dated, Signed and delivered this 23rd day of January, 2020

Mathews N. Nduma

Judge

Appearances

Mr. Kirwa for Claimant

Chrispo – Court Clerk