



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 1911 OF 2015

KENYA NATIONAL PRIVATE

SECURITY WORKERS UNION.....CLAIMANT

VERSUS

TOTAL SECURITY SECURITY

SURVEILLANCE SERVICES LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant is a trade union registered to represent workers in the private security industry. She brought this suit on 27.10.2015 on behalf of 41 former employees of the respondents, hereinafter called the 'grievants' seeking the following reliefs:

- (i) A declaration that the Respondent's action to summarily dismissing the grievants from employment was illegal, unlawful, unfair and inhumane.**
- (ii) An order for the respondent to pay the grievant's their terminal dues and compensatory damages.**
- (iii) Underpayment of wages of Kshs. 1,100/- per person per month for one year.**
- (iv) Unpaid house allowance of Kshs. 990/- per person per month for 12 months.**
- (v) Standard overtime of Ksh. 3,828/- per person for 12 months.**
- (vi) Uniform refund of Kshs. 395/- per person for 12 months.**
- (vii) An order for the respondent to pay the claimant's costs of this claim plus interest thereon.**

2. The respondent filed defence on 1.2.2018 admitting that the grievants were formerly employed by her on casual basis and assigned to guard Kenya Pipeline in their respective local areas in Sultan Hamud, Salama, Emali, Masimba and Malili. She denied the alleged unfair and unlawful dismissal and averred that the reasons for the dismissal was termination of the outsourcing contract with Kenya Pipeline Corporation on 31.8.2012

3. She further averred that a fair procedure was followed before terminating the services of the grievants by serving one month notice to them and the Labour Officer. Accordingly, the respondent denied each and every prayer sought and urged that the suit be dismissed with costs.

Claimants evidence

4. The claimant called Mr. Amos Ndunda to testify on behalf of the other grievants and he gave evidence as Cw1. He stated that he joined the respondent in 2010 with the other grievants herein and they were based at Sultan Hamud to guard the pipeline. His salary was Kshs. 5000/- and was never increased. He further contended that NSSF contributions were not remitted regularly and that despite working extra time, he was never paid overtime. He was being given off day every week but in his view the salary was underpaid considering the General wage order for the security sector.

5. He further testified that on 1.8.2012, their supervisor called all the grievants to a meeting at Masimba where he gave each of them a letter terminating their employment and promising to re-employ them in future if vacancies arose. He contended that the reasons for the termination was that the tender given to the respondent by the company had lapsed. He further contended that no terminal benefits were paid

to them upon termination and they reported the matter to the union.

6. He further testified that the union served demand letters but they were ignored and she reported a dispute to the Labour Officer and the respondent was summoned. However, again she ignored the summons and the matter was referred to this court. He prayed for the reliefs sought in the suit for himself and the other grievants.

7. In cross-examination, CW1 maintained that he worked for the respondent from 2010 to 2012 based at Sultan Hamud. He contended that before joining the respondent, he was guarding the same pale under Brick Security who had been given the tender by the pipeline company from 2008 to 2010. He admitted that after receipt of the termination letter, he continued working up to the end of August 2012 and he was paid salary.

8. CW1 further admitted that his salary was being paid through the basic but denied that he was being paid house allowance. He admitted that he was working near his home and that he was deducted uniform levy of Kshs. 300 but only in 3 months on condition that it would be refunded upon separation.

Defence evidence

9. The respondents Human Resource Manager Ms. Patricia Kinyanjui testified as RW1. She stated that between 1.3.2011 and 30.6.2012, the respondent was given a contract to provide private security services to the Kenya Pipeline but later the contract was extended to end of August 2012.

10. RW1 further testified that the grievants were being paid Kshs. 6000 per month inclusive of house allowance of Kshs. 1000 and Ksh. 422 standard overtime pay. She further testified that the grievants were given one day off per week totaling to 4 off days per month. She further contended that the grievants were charged Kshs. 3950 for uniform through monthly deductions but the same was never refunded to them because they never returned the uniform after the separation.

11. RW1 also testified that the actual number of the grievants is not 41 because number 1 and 39, number 3 and 41 are repeated in the list. She further contended that Peter Musau Ndunda never worked for the respondent because his application for job was made in October, 2012.

She further contended that the grievants were served with termination notice on 1.8.2012 which was copied to the Labour Office and later was received thereafter from the Labour Officer.

12. In cross-examination, RW1 maintained that the grievants were being paid Kshs. 6000 gross pay which was above the minimum wage under the General Wage Order. She confirmed that the grievants were being paid through the bank. She contended that the grievants were made aware that their contract by pipeline company was not going to be renewed. She maintained that termination notice was served on the grievants and the Labour Officer and contended that there was no Recognition Agreement between the respondent and the claimant union. She admitted that the terminal dues mentioned in the termination notice were never paid. She concluded by stating that the grievants were aware that their employer was pegged on the existence between the respondent and the Kenya Pipeline Company.

13. After the hearing both parties filed written submissions.

Issues for determination

14. Upon careful consideration of the pleadings, evidence and the oral submissions, the following issues arose for determination.

- (a) Whether the suit is time barred.
- (b) Whether the grievants employment was unfairly and unlawfully terminated by the respondent.
- (c) Whether the reliefs sought by the claimant should be granted.

Analysis and determination

(a) Whether the suit is time barred.

15. It is common knowledge that the grievants' employment was terminated effective 31.8.2012 and brought this suit under the provisions of the Employment Act on 27.10.2015 under Section 90 of the Act, any claim founded on the Act or contract of employment generally must be commenced within 3 years immediately after the date when cause of action arose.

16. In this case the cause of action arose on 31.8.2012 and three years lapsed on 31.8.2015. Consequently, the suit having been filed 27.10.2015, is time barred because it was filed almost 2 months out of time. The corollary to the foregoing is that this court lacks jurisdiction to determine the suit because the same was extinguished after the cause of action expired. I must therefore drop my tools and strike out the suit with no order as to costs.

Dated, signed and delivered at Nairobi in open court this 17th day of January, 2020.

ONESMUS MAKAU

JUDGE