



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 403 OF 2015

(Before Hon. Justice Mathews N. Nduma)

JOHN ROGENA MAEMBE.....CLAIMANT

VERSUS

BEDROCK SECURITY SERVICES LIMITED.....RESPONDENT

JUDGMENT

1. The claimant filed suit on 13th November 2015, praying for:

(a) Compensation for unfair termination of employment and terminal benefits including:

- (i) One month salary in lieu of notice Kshs. 10,116.15.
- (ii) Payment in lieu of leave days not taken Kshs. 14,162.40.
- (iii) Payment for public holidays worked and not paid double rate Kshs. 13,488.
- (iv) Payment in lieu of 104 weekly rest days not given at 674.40 Kshs. 70,137.60.
- (v) Arrear salary for 2 months Kshs. 20,232.30.
- (vi) Underpayments in terms of legal notice no. 197/2013 Kshs. 70,137.60.
- (vii) Severance pay for 2 years Kshs. 10,116.15.
- (viii) Overtime Kshs. 179,184 and
- (ix) Payment in lieu of annual leave Kshs. 14,162.40.

2. The suit was amended on 25th January 2017 to change the name of Respondent to Bedrock Security Services Limited.

3. Despite service of the summons to enter appearance and memorandum of claim, the respondent failed to enter appearance nor file a statement of defence. The matter proceeded to formal proof and claimant testified that he was employed by the respondent on 1st January 2012 in the position of Security guard stationed at Telecom Kenya Kisii Branch. That the claimant worked diligently and continuously until 31st May 2014 when his supervisor Mr. Joseph Mose Nyamweya told the claimant that the work was over and that the claimant should not report back on 1st June 2014. The claimant was not charged with any misconduct, was not given any notice or paid in lieu thereof. The claimant was not given notice to show cause nor was he subjected to any disciplinary hearing. The claimant was not given any letter of termination nor any reason for the termination. The claimant and his colleague, named John decided to report the matter to the labour office in Kisii. The claimant was not paid any terminal benefits. The claimant testified on the specific particulars of claim set out in the amended memorandum of claim and in the witness statement filed on 13th November 2015 which the claimant adopted as his evidence in chief. The evidence by the claimant was not rebutted at all and the court finds that the above terminal benefits have been proved on a balance of probabilities and awarded accordingly in favour of the claimant in the sum of Kshs. 384,439.

Compensation

4. The claimant's employment was also unlawfully and unfairly terminated in that the respondent did not provide a valid reason for the termination nor did the respondent follow a fair procedure in terminating the employment of the claimant. Accordingly, the respondent violated sections 36, 41, 43 and 45 of the Employment Act and the claimant is entitled to compensation in terms of Section 49(1) (c) and (4) of the Employment Act, 2007.

5. In this regard, the claimant did not contribute to the termination. The claimant had served for two (2) years with a clean record. The claimant was not provided notice of the job loss. The claimant lost opportunity of career growth and suffered loss and damage. The respondent underpaid the claimant; did not let the claimant go on leave; did not pay for overtime worked and did not give the claimant any off day's including public holidays. These are aggravating factors. The claimant was not paid any terminal benefits nor compensated for the job loss. The court awards the claimant the equivalent of three months salary in compensation for the unlawful and unfair termination of employment in the sum of Kshs (11,633.60x3) 34,900.8

6. In the final analysis judgment is entered in favour of the claimant against the respondent in the sum of Kshs. 419,339.8.

7. Interest at court rates from date of judgment till payment in full.

8. Costs of the suit.

Judgment Dated, Signed and delivered this 25th day of February, 2020

Mathews N. Nduma

Judge

Appearances

Mr. Kirwa for claimant.

Chrispo – Court Clerk