



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 1841 OF 2015

NORAH G. ONDIEKI.....CLAIMANT

VERSUS

HATARI SECURITY GUARDS LIMITED.RESPONDENT

JUDGEMENT

1. The Claimant brought this suit against the respondent on 16.10.2015 seeking the following reliefs arising out of her employment contract:-

- a) Terminal dues.
- b) Interest on (a) above at commercial rate as published by Central Bank of Kenya from when they became due.
- c) The Respondent does issue the Claimant with a Certificate of Service.
- d) General damages for pain and suffering for the work injury
- e) Special damages.
- f) The Respondent to pay costs of this claim with interest at court rates.

2. The Respondent filed defence on 27.2.2018 denying that she employed the claimant and put her to strict proof. She further denied the alleged unfair termination of the claimant's services and further denied that the claimant is entitled to the reliefs sought. She therefore prayed for the suit to be dismissed with costs.

Evidence

3. The Claimant testified that he was employed by the respondent on 16.6.2012 as a security guard and after a successful 3 months' training, she was posted to man KCC Dandora gate. Her gross salary was Kshs. 7500 per month but was deducted Kshs. 150 per month towards uniform levy, NSSF and NHIF. However the NHIF and NSSF deductions were never remitted to the concerned agencies because she was not registered as a member.

4. She further testified that on 28.10.2012, and while in the cause of her duty, a motor vehicle knocked the gate while she was opening and injured her. She further testified that after the said injury her supervisor started mistreating her and after a while she was ordered to surrender company property.

5. She produced bank statement, staff card and medical report as exhibits to support her claim.

6. The Respondent never tendered any evidence to substantiate her defence. She also never filed any submission for consideration by the court.

Issues for determination

7. The issues for determination are:

- (a) Whether the claimant was employed by the respondent

(b) Whether the employment was unfairly terminated.

(c) Whether the claimant was injured while in the cause of her employment on 18.1.2015.

(d) Whether the claimant is entitled to the reliefs sought in the claim.

(a) Employment Relationship

8. The Claimant's evidence that she was employed by respondent as a security guard has not been rebutted. In fact, the said relationship is confirmed by the Staff identity Card produced as exhibits by the claimant which has not been disowned by the respondent.

(b) Unfair Termination

9. The Claimant's case is that she got injured while on duty and thereafter her supervision started mistreating her and finally she was directed to surrender all company property. In her written statements, she stated that she went to the head office but again she was directed that if she wanted to go back to work, she would have to reapply and undergo fresh training. Such evidence supports the claimants contention that she was dismissed from employment unfairly.

10. Under section 45 (2) of the Employment Act, termination of employees services is unfair if the employer fails to prove that the termination was grounded on valid and fair reason (s) related to the employees conduct, capacity and compatibility or based on the employers operational requirements; and further that a fair procedure was followed.

11. The Respondents never tendered any evidence to discharge the said statutory burden of proof and as such, I must return that the termination of the claimant's employment was not grounded on valid and fair reason and fair procedure was not followed and as such, it was unfair within the meaning of section 45 of the Employment Act.

(c) Work Related Injury

12. The Claimant contended that on 18.10.2015 she was injured on the left hand when the gate she was opening was hit by a motor vehicle. She produced police medical report prepared by Mama Lucy Kibaki Hospital on 17.1.2013. The report referred to the injuries sustained on 18.10.2012. The foregoing evidence was not rebutted by the defence. Consequently, I return that the claimant has proved by evidence that she was injured while on duty on 18.10.2012.

(d) Reliefs sought

13. Under section 49 (1) of the Employment Act, the claimant is entitled to the prayer for salary in lieu of notice and compensation for unfair termination of her employment. Accordingly, she will get one month salary in lieu of notice plus two months salary in lieu of notice as compensation for the unfair termination considering her short service with the respondent.

14. The Claim for service pay is dismissed because the claimant never served for a complete year.

15. The claim for house allowance is granted at the conventional rate of 15% of the Basic Salary of Kshs. 7500/- for the 5 months served from June 2012 to 28.11.2012 equalling to Kshs. 5625/-.

16. The claim for refund of Kshs. 3000/- is allowed to the extent of the amount deducted from the claimant's salary. In her own evidence, she was to be deducted Kshs. 150 per month until the Kshs. 3000/- is realized. I therefore award her Kshs. 750/- as uniform levy refundable for the 5 months served.

17. The claim for refund of unremitted NSSF and NHIF deductions is dismissed for lack of particulars and evidence.

18. The claim for withheld salary for September and October, 2012 is dismissed because, the bank statement produced indicates that the employer continued to pay salary upto January 2013. Without clear particulars of the claim for the unpaid salary and evidence, the claim must fail.

19. The Claim for Certificate of Service is a right under section 51 of the Employment Act if the employee serves for over 4 weeks. The claimant worked for a longer period and I, therefore, direct that she be granted the Certificate of Service as prayed.

20. The claim for damages for work injury must fail. The medical report produced was prepared 3 months after the injury. There is no evidence showing that she was treated immediately after the injury, and the injury reported to the employer and the Director of Occupational Safety and Health Services as required by the law. In the circumstances, I find it hard to ascertain the degree of injuries upon which to base any reasonable award.

Conclusion and Disposition

21. I have found that the claimant was employed by the respondent as a security guard and that the employment was unfairly terminated by the respondent. I have further found that the claimant was injured while on duty but the decree of incapacity was not assessed by the Director of Occupational Safety and Health Services. Finally, I have found that the claimant is entitled to the following reliefs and I order judgment for her accordingly:

| | |
|--------------------------|------------------------|
| (a) Notice..... | Kshs. 7,500.00 |
| (b) Compensation..... | Kshs. 15,000.00 |
| (c) House Allowance..... | Kshs. 5,625.00 |
| (d) Uniform Levy..... | Kshs. 750.00 |
| TOTAL..... | Kshs. 28,875.00 |

23. The award is subject to statutory deductions but in addition to costs and interest at court rates from the date hereof.

Dated, signed and delivered in open court at Nairobi this 21st day of February, 2020.

ONESMUS N. MAKAU

JUDGE