



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 56 OF 2014**

**JOSEPH KAMAU AND OTHERS.....CLAIMANT**

**VERSUS**

**G4S SECURITY SERVICES (K) LIMITED.....RESPONDENT**

**JUDGMENT**

1. The suit by G4S claimants was declared time barred by the Court of Appeal except with respect to five (5) claimants namely:

- (i) Julius Abura, claimant number 14.
- (ii) Dennis Mwaniki, claimant number 65,
- (iii) Douglas Gisembe, claimant number 136.
- (iv) Enock Bugonko, claimant number 136 and
- (v) Maritinus Masoka Onguso, claimant number 334 whose suits were declared not time barred.

2. The claimants called one witness, CW1 Mr. Joseph Kamau who had testified before the Court of Appeal ruling on behalf of all the claimants. CW1 testified that the claimants were employed by Armor Group which was acquired later by G4S in May 2008. That the claimants were assured that they would be taken over by the respondent G4S by a memo dated 12<sup>th</sup> June 2008 produced before court. The memo read “*all staff have a job*” and that there will be no change of employment terms. CW1 testified that G4S did not follow this promise and the claimants were arbitrarily sacked and were not paid their terminal benefits. The claimants according to CW1 were all declared redundant without following the dictates of *Section 40 of the Employment Act, 2007*. CW1 adopted a witness statement he had filed in court as part of his evidence in chief. CW1 added that all the claimants suffered the same fate as himself. The claimants presented before court list of all the claimants providing their particulars of employment and terminal dues payable to them by virtue of their date of employment and gross monthly salary each one of them earned at the time they were declared redundant. CW1 prayed that the termination of the employment of the claimants be declared unlawful and unfair and that each one of them be paid their full terminal benefits in terms of *Section 40* and they be compensated for wrongful termination in terms of *Section 49 of the Employment Act, 2007*.

3. The respondent called RW1 Boniface Ngungu the Human Resource Manager of the respondent. RW1 adopted a witness statement dated 2<sup>nd</sup> April 2019 as his evidence in chief and produced documents filed on the same date in defence of the case. RW1 stated that not all the claimants were declared redundant. That the claimants left employment for different reasons and at different times. That the claimants needed to testify individually on the specifics of their case. RW1 testified that some of the claimants deserted work; some were declared redundant and others resigned. RW1 insisted that Julius Abura and Enock Bogonko resigned from employment on 30<sup>th</sup> August 2011. He however did not have their letters of resignation.

4. RW1 admitted that Dennis Mwaniki was declared redundant but insisted that he was paid full benefits upon declaration of redundancy. RW1 stated that Julius Abura, Enock Bogonko and Maritinus Masoka Onguso were not paid any terminal benefits. RW1 added that Douglas Gisembe deserted work and his employment was terminated. RW1 stated that he did not have their records because they had been transferred from Amor Group (K) Limited to G4S which acquisition took place in 2008.

5. RW1 added that he has no evidence that the 5<sup>th</sup> claimant was paid any final dues.

6. RW1 added that Julius Abura and Enock Bogonko were reinstated after conciliation by the ministry of labour but the two declined to return to work.

7. RW1 prayed the suit be dismissed with costs.

## **Determination**

8. The issues for determination are:

- (a) Whether the 5 claimants have proved their respective cases on a balance of probabilities.
- (b) What reliefs, if any, the 5 claimants are entitled to.

9. CW1 testified that the claimants were summarily dismissed and one declared redundant by the respondent upon taking over the business from the previous employer on diverse dates. Each of the five (5) claimants provided to the court their particulars of employment including their date of employment; number of years served; the monthly salary they earned; the respective date of termination and the remedies sought against the respondent.

10. These facts are as follows:

(i) Julius Abura was employed in 1999 and was summarily dismissed by the respondent in August 2011. At the time of dismissal, the claimant earned Kshs. 7,032 per month. The claimant was owed arrear salary in the sum of Kshs. 8,032 and was not paid overtime in the sum of Kshs. 122,411. The claimant also sought payment of terminal gratuity in terms of the CBA in the sum of Kshs. 43,814. The claimant sought maximum compensation which is the equivalent of 12 month salary for the unlawful and unfair summary dismissal.

(ii) Dennis Mwaniki

The claimant provided records that show that he was employed by the respondent in the year 2000 and was summarily dismissed in April 2012. The claimant had served the respondent for eight (8) years. At the time of summary dismissal, the claimant was owed arrear salary in the sum of Kshs. 7,500; overtime in the sum of Kshs. 137,280 and terminal gratuity in the sum of Kshs. 36,000. The claimant prays for compensation for unlawful and unfair summary dismissal by the respondent. The claimant earned Kshs. 5,796 per month.

(iii) Douglas Gisemba

The claimant provided records showing that he was employed by the respondent in 2001 and was summarily dismissed in April 2012. The claimant earned Kshs. 5,796 per month. The claimant was owed overtime in the sum of Kshs. 122,411 and terminal gratuity in the sum of Kshs. 28,088.

(iv) Enock Bogonko

The claimant provided records to show that he was employed in 2005 and earned Kshs. 5,786 per month. The claimant was summarily dismissed in August 2011. At the time the claimant was owed Kshs. 6,796 arrear salary; Kshs. 20,063 overtime and Kshs. 69,552 terminal gratuity. The claimant prays for compensation for unlawful and unfair termination of employment.

(v) Maritinus Masoka

The claimant provided records that show that he was employed in the year 2005 and was declared redundant in August 2009. At the time, the claimant earned Kshs. 8,464 per month. The claimant was owed Kshs. 6,796 arrear salary and was owed Kshs. 6,796 in lieu of leave days not taken. The claimant was also owed Kshs. 382,102 overtime and Kshs. 140,002 terminal gratuity. The claimant seeks compensation for the unlawful and unfair termination of employment.

## **Compensation**

11. The testimony by the representatives of the claimants is that they were all on various dates informed that their services were no longer required for operational reasons. That they were declared redundant without the respondent following the procedure and substantive remedies provided under *Section 40 of the Employment Act, 2007*. That the claimants were not given notice of the intended declarations of redundancy nor were any notices sent to their union. That the claimants were either informed verbally or in writing that their services were no longer required and asked to go away immediately. That they were not paid the terminal benefits they now claim in as mandated under *Section 40 of the Act* nor were they given reason for their selection for retrenchment and opportunity to engage the employer on that chance. The claimants produced documentary evidence in support of their respective claims and urge the court to find that the respondent had no valid reason to terminate their employment and it did not follow mandatory statutory procedure in effecting the termination.

12. The respondent on the contrary submits that the witness who testified on behalf of the claimants did not know each one of the claimants personally and were not aware of the dates or the manner in which each of the contracts of the claimants were terminated. That those who were retrenched in 2009, their correct number of cumulative years were indicated by the respondent upon taking over the company from Armor group in 2008.

13. The respondent submits that the five (5) claimants left employment on different dates for different reasons and since each one of them did not testify on the manner, reason and date of termination, they have not proved their claims on a balance of probabilities and the claims be dismissed with costs.

14. The respondent further submitted that the witness for the claimants, Mr. Kamau admitted that all claimants were always paid overtime as and when it accrued. That the pay slips at pages 112 to 140 exhibit the payments of overtime which documents were filed by the claimants on 10<sup>th</sup> May 2016. Mr. Kamau however testified that the claimants were forced to work for an extra 12 hours for which they had not been compensated.

15. The respondent concludes that the five (5) claims were not proved and must fail. That the testimony by Boniface Ngungu RW2, did not take the case any further since he did not adduce evidence specific to the five (5) remaining claimants. That each of the five claimants left work for different reasons and at different time and were paid their terminal dues upon termination.

16. That the 1<sup>st</sup> and 4<sup>th</sup> claimants were dismissed on 31<sup>st</sup> March 2010 for misconduct. That the two were reinstated to work by a letter dated 30<sup>th</sup> August 2011 but they both declined to resume work and resigned from employment.

17. That the 2<sup>nd</sup> claimant was declared redundant on 2<sup>nd</sup> November 2011 and was paid all terminal benefits. The claim for gratuity, compensation, arrears salary and overtime have not been proved and same be dismissed with costs.

18. That the 3<sup>rd</sup> claimant deserted work on 20<sup>th</sup> March 2013 and is not entitled to any of the reliefs sought.

19. Finally, respondent testified that the 5<sup>th</sup> claimant deserted work on 28<sup>th</sup> February 2011 and his employment was terminated on 14<sup>th</sup> April 2011 on account of desertion.

### **Determination**

20. The issues for determination are:

- (i) Whether the 5 claimants have proved on a balance of probabilities that their employment was terminated unlawfully and unfairly.
- (ii) Whether the claimants are entitled to the reliefs sought.

21. In answer to issue (i) above, the court agrees with the testimony and submissions by the respondent that none of the five (5) claimants adduced evidence on oath regarding the circumstances under which their employment was terminated. The five claimants rely on the testimony of CW1 Joseph Kamau who did not adduce any direct evidence regarding the specific circumstances under which any of the five (5) claimants lost their employment. On the contrary RW1 Boniface Ngungu testified under oath the circumstance under which the five claimants left employment.

22. The claimants have the burden of establishing that their termination of employment was wrongful under *Section 47(5) of the Employment Act, 2007*. The respondent on the other hand bears the evidential burden of justifying the termination by showing that it had a valid reason to terminate the employment of each of the claimants and that it followed a fair procedure in terminating the respective employment contracts.

23. It is the court's considered finding that the claimants did not prove on a balance of probabilities that their specific termination of employment was wrongful and unfair having failed to adduce any direct evidence on the matter. This aspect of the claimants' case lacks merit and is dismissed. The claimants are not entitled to any compensation.

### **Terminal benefits**

24. The witnesses who testified on behalf of the claimants produced bundle of documents which demonstrated the specific dates each of the claimants was employed and the specific date of termination. The claimants were able to prove on a balance of probabilities that the respondent failed to pay terminal benefits carried over from the previous employer Armor Group to the claimants up to their respective date of termination. The court is satisfied that sufficient evidence was adduced to prove on a balance of probabilities that the five (5) remaining claimants were owed the specific terminal benefits set out in the statement of claim and the filed list of documents.

25. Accordingly, the court enters judgment in favour of the five (5) claimants for payment of terminal benefits set out herein before in this judgment as follows:

- (a) Julius Abura Kshs. 174,257.
- (b) Dennis Mwaniki Kshs. 180,780.
- (c) Douglas Gisembe Kshs. 150,499.
- (d) Enock Bogonko Kshs. 26,859.
- (e) Maritinus Masoka Kshs. 25,629.

**Total award Kshs. 558,024.**

- (f) Interest at court rates from date of filing suit till payment in full.

(g) Costs of the suit.

**Dated, signed and delivered in Nairobi this 16<sup>th</sup> day of April , 2020**

**Mathews N. Nduma**

**Judge**

**ORDER**

In view of the declaration of measures restricting court of operations due the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> March 2020, this judgment has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by **Article 159(2)(d)** of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under **Article 48** of the Constitution and the provisions of **Section 18 of the Civil Procedure Act (chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

.....

**Judge**

**Appearances**

Okong'o Wandago and Company Advocates for the claimants.

Honton Harison and Mathews for the Respondent's

Mamo- Court clerk.