



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 277 OF 2018

(Before Hon. Justice Mathews N. Nduma)

KENYA NATIONAL UNION OF PRIVATE SECURITY WORKERSCLAIMANT

VERSUS

DYNAMITE SECURITY LIMITEDRESPONDENT

JUDGMENT

1. The suit was filed on 16th August 2018 by the Claimant Union on behalf of the grievant Mr. Newton Okwako.
2. The Claimant union prays that the grievant be paid his outstanding salary arrears and other terminal dues as set out in the tabulation attached to the statement of claim including compensation for unlawful and unfair termination of employment.
3. The grievant (CW1) testified under oath that he was employed by the respondent as a security guard at a basic salary of Kshs. 7,000 per month.
4. That he worked diligently until 17th August 2015 when he was summarily dismissed by a letter of the same date. That the dismissal was unlawful and in violation of section 35(5) of the Employment Act, 2007 and the Regulation of wages (protective security services) order 1998.
5. That CW1 had no previous warnings, the dismissal was without notice and attempts by the union to resolve the matter was rebuffed by the respondent.
6. The dispute was reported to the Ministry of Labour by the union on 11th August 2016. Attempts by a conciliator to resolve the matter failed due to the intransigence of the respondent.
7. A certificate of unresolved dispute was issued in terms of section 69(9)(b) of the Labour Relations Act, 2007.
8. CW1 testified that there was no valid reason for the summary dismissal and the respondent failed to give CW1 any opportunity to defend himself.
9. CW1 prayed the suit be granted as prayed.
10. The claimant prays for payment of: -
 - i. 17 days' unpaid salary in the sum of Kshs. 7,408.08
 - ii. Under payments for a period of 5 months when the claimant earned Kshs. 7,000 basic salaries instead of Kshs. 11,330, which was the minimum statutory wage for a security guard at the time $(11,330 - 7,000 = 4,330 \times 5) =$ Kshs. 21,650 and house allowance at 15% for the same 5 months' period in the sum of Kshs. 8,497.5.
 - iii. Payment in lieu of one-month notice $(11,330 + 1,169)$ Kshs. 12,499.
 - iv. Overtime for 5 months calculated at 1.5 times the salary for 225 hours in the sum of Kshs. 32,048.
 - v. Payment at double rate for public holidays worked for 5 months Kshs. 6,042.67.

vi. Payment in lieu of leave days not taken for 5 months Kshs. 6,536.54.

vii. Certificate of service to be issued.

11. The testimony by the grievant regarding that unpaid terminal benefits was not rebutted by the respondent who despite filing a statement of defence did not appear at the hearing of the suit.

12. The grievant has by adduced evidence proved on a balance of probabilities that he was owed and not paid the aforesaid terminal benefits in the sum of Kshs. 94,861.79. The court awards the grievant accordingly.

Compensation

13. The grievant worked for five (5) months for the respondent without blemish and his employment was terminated for no valid reason and without being accorded a hearing in violation of sections 35(5),36,41,43 and 45 of the Employment Act, 2007.

14. The conciliator from the Ministry of Labour had recommended to the respondent to pay the grievant in respect of underpayments in terms of the Legal Notice no. 17 of 2015 and he be paid other claimed terminal benefits but the respondent did not heed the advice from the labour officer.

15. The grievant did not contribute to the summary dismissal and he is entitled to compensation in terms of section 49(1) (c) and 4 of the Employment Act, 2007.

16. The grievant lost his employment without notice and was not compensated by the respondent for the job loss.

17. The grievant was not given a certificate of service to help him get alternative employment.

18. The grievant had served a short period of 5 months and the Court awards him the equivalent of one (1) month salary in compensation for the unlawful and unfair summary dismissal in the sum of Kshs. 12,499.

19. In the final analysis Judgment is entered in favour of the grievant against the respondent as follows: -

i. Kshs. 12,499 in compensation.

ii. Kshs. 94,681.79 being terminal benefits.

Total Award Kshs. 107,180

iii. Interest at Court rates from date of Judgment in respect of (i) above and from date of filing suit in respect of (ii) above till payment in full.

iv. Respondent to provide the grievant certificate of service within 30 days.

v. Costs to follow the event.

Judgment Dated, Signed and delivered at Nairobi this 30th day of July, 2020

Mathews N. Nduma

Judge

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this ruling 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.

Mathews N. Nduma

Judge

Attendance

Francis Mandegwa for Claimant Union

J. D Kwema & Co. Advocates for the Respondent.

Chrispo: Court Clerk.