



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR**

**RELATIONS COURT AT NAIROBI**

**CAUSE NO. 2231 OF 2016**

(Before Hon. Lady Justice Hellen S. Wasilwa on 13<sup>th</sup> October, 2020)

**WILSON BARONGO BISERA.....1<sup>ST</sup> CLAIMANT**

**NATHAN NYAMWAKA MARTIN.....2<sup>ND</sup> CLAIMANT**

**VERSUS**

**MICNELEST SECURITY COMPANY LIMITED..RESPONDENT**

**JUDGEMENT**

1. The Claimants herein filed their Memorandum of Claim dated 14<sup>th</sup> September, 2016 and filed in Court on 2<sup>nd</sup> November, 2016, in which they seek compensation for unfair and unlawful termination of their employment by the Respondent herein as well as its failure to pay their terminal dues and compensatory damages.
2. The Claimants maintain that they were both employed by the Respondent herein on or about 24<sup>th</sup> April, 2016 and 1<sup>st</sup> May, 2016 respectively in the capacity of Security Guards and were both earning a monthly salary of Kshs. 8,000/-.
3. The Claimants further maintained that they both performed their duties diligently and to the Respondent's satisfaction with no disciplinary issued or warnings issued by the Respondent.
4. They further maintained that the Respondent failed and/or ignored to pay their salaries since they reported for duties and that as a result the Claimants reported the issue with the Labour Officer where upon the Respondent unlawfully and maliciously terminated their employment after being summoned to the Labour Officer in charge to respond to the Claims of the non-payment of the Claimants salaries.
5. The Claimants maintain that the Respondent's actions amounted to summary dismissal from employment which is unlawful and unfair in the circumstances.
6. Aggrieved by the decision to terminate their employment the Claimants filed the instant Claim seeking the following reliefs:-

***1. A declaration that the Respondent's termination/dismissal of the Claimants employment was illegal, unlawful, unfair and inhumane and that the Claimants are entitled to their terminal benefits and damages.***

***2. An order that the Respondent to pay the Claimants their unpaid salaries and compensatory damages of Kshs. 186, 135/- and Kshs. 183,315/- respectively. comprising of the following:-***

**WILSON BARONGO BISERA**

- |                                                            |                              |
|------------------------------------------------------------|------------------------------|
| <b><i>i. Salary for one month in lieu of notice</i></b>    | <b><i>Kshs. 12,221/-</i></b> |
| <b><i>ii. Unpaid salary for the month of June 2016</i></b> | <b><i>Kshs. 12,221/-</i></b> |
| <b><i>iii. Unpaid Salary for the month of May 2016</i></b> | <b><i>Kshs. 12,221/-</i></b> |
| <b><i>iv. Unpaid salary for 2 days in April 2016</i></b>   | <b><i>Kshs. 2,820/-</i></b>  |

v. Compensation for loss of employment for 12 months Kshs. 146,652/-

**TOTAL** ..... **Kshs. 186,135/-**

**NATHAN NYAMWAKA MARTIN**

i. Salary for one month in lieu of notice Kshs. 12,221/-

ii. Unpaid salary for the month of May 2016 Kshs. 12,221/-

iii. Unpaid Salary for the month of June 2016 Kshs. 12,221/-

iv. Compensation for loss of employment for 12 months Kshs. 146,652/-

**TOTAL** ..... **Kshs. 183,315/-**

**3. An Order for the Respondent to pay the Claimants costs of this Claim plus interest thereon.**

7. The Respondent despite being served with the summons as well as the Statement of Claim herein failed to enter Appearance or file an appropriate Response to the Claim. The matter was subsequently certified ready to proceed as an undefended Claim and the Claimant directed to fix the matter for hearing.

#### **Evidence**

8. The matter proceeded for hearing on 17<sup>th</sup> September, 2020 with the 1<sup>st</sup> Claimant, CW1 testifying. He sought and was allowed to have his Witness Statement filed in Court on 2<sup>nd</sup> November, 2016 adopted as his evidence in chief. In her statement the Claimant reiterates the averments made in her Memorandum of Claim.

9. The Claimant further averred that the Respondent's actions were unlawful, unfair and contrary to the provisions of the Employment Act and as a result urged this Court to allow their claim in terms of the reliefs sought therein.

10. The Claimant was thereafter directed to file his written submissions to the Claim.

#### **Claimant's Submissions**

11. It is submitted on behalf of the Claimants herein that their termination from employment was unfair and wrongful as the Respondent failed to adhere to the mandatory provisions of Section 45 of the Employment Act, 2007. To buttress this argument the Claimants cited and relied on the case of **Walter Ogal Anuro Vs Teachers Service Commission (2013) eKLR** where the Court held that for a termination to be fair there must be both substantive justification and procedural fairness.

12. The Claimants further submitted that the Respondent failed to follow due process of the law in terminating their employment and therefore urged this Honourable Court to allow their Claim in terms of the reliefs sought therein.

13. I have examined the evidence and submissions of the Claimants herein. This matter proceeded exparte the Respondent having been served and having failed to enter appearance or file defence.

14. The Claimants had reported to the Labour Officer who served the Respondents and they also failed to appear. The Claimants' case remained uncontroverted.

15. I find the Claimants have established their case as prayed. I find for Claimants and enter judgement for them as prayed as follows:-

#### **1<sup>st</sup> Claimant**

1. 1 month salary in lieu of notice = 12,221/=

2. Unpaid salary for April (2 days), May and June compensation = 27,262/=

3. 6 months' salary as compensation for unlawful termination = 12,211 x 6 = 73,326/=

**Total = 112,809/=**

#### **2<sup>nd</sup> Claimant**

1. 1 month salary in lieu of notice = 12,221/=

2. *Unpaid salary for May and June 2016* = 24,442/=

3. *6 months' salary as compensation for unlawful termination* = 6 x 12,211 = 73,326/=

**Total = 109,989/=**

16. The Respondent will pay costs of this suit plus interest at Court rates with effect from the date of this judgement.

**Dated and delivered in Chambers via zoom this 13<sup>th</sup> day of October, 2020.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Mungoni for Claimants