



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 1526 OF 2015

(Before Hon. Lady Justice Maureen Onyango)

BENARD MULI.....CLAIMANT

VERSUS

STANMORE SECURITY SERVICES LIMITED.....RESPONDENT

JUDGMENT

The claim herein is undefended. The same was filed on 31st August 2015 by the Claimant against the Respondent whom he alleges to have been his employer from 7th May 2012 to 2015. In the claim it is alleged that the respondent, a limited liability company operating as a private security company engaged the claimant as a security guard and posted him to various assignments including Kasuku Centre, Jin Park Building and Pachohome.

It is the claimant's averment that his last assignment which was at Pachohome Building ended on 7th May 2015 when the Respondent's contract lapsed. The claimant avers that the Respondent promised to pay his salary for April and May 2015 which were then outstanding, and then post him to another assignment. The Respondent however never paid the outstanding salary or post him to another assignment.

The claimant avers that the termination of his employment was unfair as he was not subjected to any disciplinary process.

The claimant avers that upon engagement he was paid a salary of Kshs.6,000/- per month which was increased to Kshs.7,000/- per month, the salary he earned to the date of termination of his employment.

The claimant avers that his salary was paid in cash from February 2012 to September 2013 when the Respondent started paying his salary through the bank.

The claimant attached a copy of his bank statement for Kenya Commercial Bank as proof of payment of salary.

The claimant further avers that NHIF deductions were recovered from his salary despite him not being fully conversant with the details.

The claimant seeks the following prayers –

- a) General damages for wrongful dismissal
- b) Terminal dues as at the date of dismissal: -
 - (i) Salary for the month of April 2015 Kshs.7,000
 - (ii) Payment for the seven (7) days worked in May 2015 Kshs.2,333
 - (iii) One month's termination notice Kshs.7,000
 - (iv) Three years' service pay Kshs.15,000

(v) Three years' annual leave.

c) Costs of this suit.

d) Interest on (1), (b) and (c) above.

In view of the fact that the claim is undefended; it was disposed of by way of written submissions and documentary evidence as per Rule 21 of the Employment and Labour Relations Court (Procedure) Rules, 2016.

In his submissions, the claimant submits that the termination of his employment was unfair as he was not issued with any letter explaining the reason for termination and was left to draw his own conclusion as to his employment status following the failure of the Respondent to pay his salary for April and May 2015 or to post him to another assignment.

On terminal benefits the claimant submitted he is entitled to pay in lieu of notice by virtue of Section 35(1)(c) and 36 of the Employment Act. He urges the court to adopt the sum of Kshs.10,954 being the relevant statutory minimum wage that the claimant was entitled to as at 2015. He further prays for unpaid salary for April and 7 days worked in May 2015, based on the applicable statutory minimum wage of Kshs.10.954.

He further submits that he is entitled to annual leave for the 3 years worked as under Section 28(1)(a) of the Employment Act, and to service pay as provided under Section 35(5) of the Act.

He further submits that having been unfairly terminated he is entitled to maximum compensation of **Kshs.131,448**.

Determination

This suit having been undefended, the averments of the claimant as to the facts of the case are uncontroverted.

In an undefended claim, the claimant must as a preliminary issue, prove the existence of an employment relationship between him and the Respondent. See **Monica Karimi Mutua v Al Arafat Shopping Centre and Another (2018) eKLR**, **Elijah Kipkoros Tonui v Ngara Opticians t/a Bright Eyes Limited (2014) eKLR** and **Herman Ilangarwa Shidakwa v Armah Security Solutions Limited (2019) eKLR**.

In the instant case, the claimant produced bank statements for the period from 7th October 2013 to 17th August 2015 which reflects deposit of Kshs.5,860 every month by Stanmore Security or its agents up to November 2014 and thereafter a sum of Kshs.7,000 with the last payment made on 10th April 2015. This corroborates the claimant's evidence that his salary was paid up to March 2015.

I therefore find that the claimant has proved on a balance of probabilities that there was an employment relationship between him and Stanmore Security, the Respondent herein.

Having found as above, the claimant is entitled his unpaid salary for April and 7 days of May 2015, salary of one month in lieu of notice, service pay, annual leave and compensation. I award him the same as prayed. For compensation, taking into account the circumstances under which his employment was terminated and the length of service, I award him four months' salary.

Conclusion

In sum, judgment is entered for the claimant against the Respondent as follows –

1. Pay in lieu of notice (consolidated) Kshs.12,597
2. Salary of April 2015 Kshs.12,597
3. Salary of 7 days worked in May 2015 Kshs.3,392
4. Leave for 3 years (based on basic pay) Kshs.26,542
5. Service pay for 3 years Kshs.18,896
6. Compensation (4 months' salary) Kshs.50,388

Total Kshs.124,412

The respondent shall pay the Claimant's costs.

The court has in recognition of the provisions of Section 3(6) and 26 of the Employment Act, and Section 48 of the Labour Institutions Act, based the award on the statutory terms of service relevant at the time of termination of the claimant's employment. The claimant produced a copy of the Gazette notice for minimum wages for 2015 in the submissions.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 4TH DAY OF DECEMBER 2020

MAUREEN ONYANGO

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 and subsequent directions of 21st April 2020, that judgments and rulings shall be delivered through video conferencing or via email. 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 1B 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.

MAUREEN ONYANGO

JUDGE