



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 198 OF 2016

(Before Hon. Justice Hellen S. Wasilwa on 27th February, 2019)

ROBERT OUKO ANDITI.....CLAIMANT

VERSUS

CORNERSTONE SECURITY SERVICES LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant filed suit on 12th February, 2016, seeking damages for unlawful and unfair termination and refusal to pay terminal dues.
2. He avers that he was offered employment on 4th August, 2011, as a site in charge at the Respondent Company with a starting salary of Kshs. 11,000/= per month which later increased to Kshs. 12,000/= exclusive of house allowance.
3. That the Claimant worked for the Respondent with due diligence and faithfulness until on or about 21st November, 2012, when the Respondent unlawfully terminated the Claimant's services on allegations of theft. At the time of the termination the Claimant alleges that he had worked for 3 years 9 months. That he worked during public holidays and overtime for which he was never compensated for as required by law.
4. It is the Claimant's contention that he was terminated without any notice or letter to show cause why he should not be terminated and the Respondent has refused to pay him salary arrears and other dues. He contends that he was never given a hearing contrary to Section 41 of the Employment Act, 2007 and the principles of natural justice.
5. He prays for the termination to be declared unlawful, payment in lieu of notice, leave for 3 years 9 months, off duty days, public holidays, overtime, service gratuity, compensation for 12 months and a certificate of service.
6. The Respondent despite being served with Summons did not enter appearance or file any defence thus the matter proceeded as undefended.

Evidence

7. The Claimant in evidence stated that he worked for the Respondent with effect from 4th August, 2011, until 21st November, 2012, when he was terminated on allegations of theft. That he was last posted at JKIA when he was informed that an incident had occurred there and as a result he was taken to the police station and was charged in Court. Thereafter he did not continue working until when he was discharged and he returned to the Respondent asking to continue work but he was not allowed to.
8. That he was not given any hearing, notice or show cause letter before termination. He stated that while he was in employment he worked 7 days a week from 6am to 6pm and even worked on public holidays. He urged the Court to allow the Claim.
9. I have examined all the evidence submitted by the Claimant. The Claimant was employed by the Respondent vide a letter dated 4.8.2011. There is no indication that the Claimant was terminated for any particular reasons.
10. The Respondent was served with the Memorandum of Claim but chose not to respond nor submit any evidence/attend the hearing. This leaves the Claimant's case undisturbed. However, from the letter of appointment, the Claimant was employed on 4/8/2011 and if he was dismissed on November 2012, he had served the Respondent for just over one year.
11. In the circumstances, I find for him as follows:-

1. 1 month salary in lieu of notice = 12,000/=.

2. 1 year leave = 12,000/=.

3. Gratuity of 15 days salary for the one year = 6,000/=.

4. 9 months' salary as compensation for the unfair termination = $9 \times 12,000 = 108,000/=$.

TOTAL 138,000/=

5. Issuance of a Certificate of Service.

6. 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 open Court this 27th day of February, 2019.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Tonui holding brief Nyabena for Claimant – Present

Respondent – Absent