



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 535 OF 2013

(Before Hon. Justice Hellen S. Wasilwa on 26th February, 2019)

ELIUD INDAYI SACHIDA.....1ST CLAIMANT

MESHACK MURENTI MATAYO.....2ND CLAIMANT

ELKANAH NYAMAYI ODUOUR.....3RD CLAIMANT

VERSUS

OUTREACH COMMUNITY CENTRE.....RESPONDENT

JUDGMENT

1. The Claimants herein filed a Memorandum of Claim dated and filed in Court on 17th April, 2013, seeking damages for wrongful & unfair termination of services and failure to pay terminal dues owed to them.

2. The Claimants state that they were employed by the Respondent as security officers on diverse dates as indicated below:

i. Eliud Indayi Sachi employed on 23rd November, 2009 earning a monthly salary of Kshs. 7,590 per month.

ii. Meshack Murenti Matayo employed on 1st February, 2011 earning a monthly salary of Kshs. 7,590 per month.

iii. Elkanah Nyamayi Oduor employed on 4th November, 2004 earning a monthly salary of Kshs. 7,590 per month.

3. The Claimants further aver that their services were terminated by the Respondent the same time in the year 2011 and that their claims against the Respondent are as itemised below:-

i. Eliud Indayi Sachi

Retirement Package Kshs. 31,249/-

Overtime Kshs. 38,668/-

Public Holidays Kshs. 92,400/-

Leave Allowance Kshs. 67,692/-

House Allowance Kshs. 72,000/-

Total Kshs. 302,029/-

ii. Meshack Murenti Matayo

Retirement Package Kshs. 31,249/-

Overtime Kshs. 38,668/-

Public Holidays Kshs. 92,400/-

Leave Allowance Kshs. 67,692/-

House Allowance Kshs. 72,000/-

Fikia Sacco Kshs. 37,000/-

Total Kshs. 339,029/-

iii. Elkanah Nyamayi Oduor

Retirement Package Kshs. 41,665/-

Overtime Kshs. 51,584/-

Public Holidays Kshs. 123,200/-

Leave Allowance Kshs. 97,799/-

House Allowance Kshs. 96,000/-

Total Kshs. 410,248/-

4. The Claimants further contend that the Respondent further made statutory deductions to their salaries namely, PAYE, NSSF and NHIF which amounts were not forwarded to the statutory bodies. The Claimants seek an Order from the Court compelling the Respondent to forward the said sums failure to which they be punished accordingly.

5. The Claimants aver that the Respondent did not issue them with certificates for service despite being requested for the same severally.

6. The Claimants further aver that despite the letter from Kenya National Security Workers Union having been issued to the Respondent, it has failed to make good the Claimants' Claim.

7. The Claimants also seek payment of damages for unlawful termination of service and issuance of Certificate of Service.

8. The Claimants urged the Court to allow their claim as drawn.

9. The Respondent in its Statement of Defence dated on 3rd May, 2013 and filed in Court on 16th May, 2013 in which they admits having employed the Claimants to work in their capacity of watchmen at the centre over the agreed terms and conditions but denies having dismissed the Claimants in the year 2011 as alleged.

10. The Respondent avers that the Claimants opted to sue the Respondent through the union, the Kenya National Private Security Workers Union in Industrial Cause No. 17 of 2011.

11. The Respondent further avers that following the filing of the above cause the Claimants among other employees refused to go to work and opted to demand for payment of their services and after receipt of the payments they failed to report back to duty.

12. The Respondent urged the Court to dismiss the Suit with costs.

Evidence

13. The Claimants gave their evidence on 22nd January, 2019. The Respondent though served with the hearing notice failed to attend Court and the matter proceeded *ex-parte*.

14. **Eliud Indayi Sachida**, (CW1) testified that he was employed by the Respondent herein as a security guard (day shift) in the year 2004 and worked up-to the year 2011.

15. CW1 further testified that in 2011 they were summoned by the Respondent and their services terminated without prior notice or explanation as to the reason for the termination.

16. CW1 averred that he seeks compensation as drafted in the Memorandum of Claim on record. He further stated that his salary at the time of separation was Kshs. 6,743/-.

17. CW2 (**Meshack Murenti Matayo**) testified that he was employed by the Respondent herein as a security guard (night shift) from October 2004 and worked until the year 2011 when his services were terminated.

18. CW2 averred that prior to his termination he was not issued with any notice and no reason for his termination was given and he was not paid his terminal dues.

19. CW2 urged the Court to allow his Claim as drawn in the Memorandum of Claim on record.

20. The 3rd Claimant is deceased and no application was made to substitute him.

21. I have examined evidence on record. The Claimants contend that they were employed by the Respondent which fact was not disputed. The manner of leaving employment is not clear but the appointment letters show that the Claimants served on fixed term contracts and in respect of the Claimant Meshack Matayo, his last contract was to end on 28/2/2012. The services of the Claimants have terminated in 2011, this was before the due date.

22. It is not clear under which circumstances the contracts terminated. The Claimants contended that they were just terminated in 2011.

23. Two Claimants No. 1 and 2 testified in Court. There was no evidence submitted by the Respondent to rebut the Claimants' case.

24. It is my finding that there being no explanation as to how these Claimants were terminated, I find the termination unfair and unjustified for want of valid reasons and procedures. I therefore find for the 1st and 2nd Claimants and I award them as follows:-

1. 1 month salary in lieu of notice = 7,590 for each Claimant

2. The Claimant sought payment of overtime, public holidays and house allowance. They were not able to explain how the overtime and public holidays became amounts submitted at 348,668 and 92,400 respectively. I award nothing on this limb.

3. On leave I award each 3 years leave = 7,590 x 3 = 22,770/=

4. On house allowance I award Claimants as follows:-

1st Claimant = 15% x 7,590 x 60 months = 68,310

2nd Claimant = 68,310/=

Totals for each Claimant = 98,670

Plus costs and interest

5. The 1st and 2nd Claimants will also be issued with a Certificate of Service.

6. The Claim against 3rd Claimant is dismissed for want of prosecution.

Dated and delivered in open Court this 26th day of February, 2019.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Njuguna holding brief Kuloba for Claimants

No appearance for Respondent