



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA
AT NAKURU
CAUSE NO.10 OF 2018

FRANCIS NYANGARESI ANGWENYI.....CLAIMANT

VERSUS

BRINKS SECURITY SERVICES LTD.....RESPONDENT

JUDGEMENT

The claimant was employed by the respondent on 1st July, 2010 as a Guard and which position he held until 6th November, 2017 when he was verbally dismissed on the grounds that he had an alcoholic smell. The claimant was earning ksh.9,500.00 per month at the time.

The claim is that the claimant had worked for the respondent for 10 years and following his unfair dismissal he is claiming for;

- a) Gratuity Ksh.47,550.00;
- b) Notice pay Ksh.9,500.00;
- c) Compensation Ksh.114,000.00; and
- d) Costs.

The claimant testified that he worked diligently for the respondent until 6th November, 2017 when he reported to Shabaab and signed in the occurrence book and allocated work in a new site at Simbi Investment but at 9pm the manager Mr Moses Wafula came with another employee unknown to him to replace him so that he could be reallocated to Industrial area where another employee had not reported but it was at night and the claimant could not go to the new location at night. When the claimant reported to work the next day he was directed to hand over and await for the payment of his dues. Such dues have never been paid.

The defence is that the claimant had the habit of reporting to work while drunk and received warning. On 6th November, 2017 the claimant reported to work under the influence of alcohol and when called upon to explain he slapped his female colleague and the reliefs sought are not due or justified.

Alice Gathoni Macharia a guard with the respondent testified that on 5th November, 2017 she reported to work at Simbi Investment to relieve the night guard, the claimant. He however reported late for duty and when he did he became violent and slapped her in the presence of the caretaker who called the manager. The claimant then absconded duty.

Moses Mauka testified that he is the branch manager Nakuru for the respondent and on 5th November, 2017 the caretaker at Simbi Investment called him following a commotion after the claimant slapped a colleague and when he went to the scene he replaced the claimant with another guard and directed him to report to work the next day where he failed to give satisfactory reasons for his actions. He reported the matter to the human resource manager who suspended the claimant.

Raymond Nzioka testified that as the human resource manager for the respondent he got a report of the claimant's conduct on 6th November, 2017 that on 5th November, 2017 he had grossly misconducted himself and was suspended for 14 days to allow for investigations. Following investigation the claimant was found culpable and his case warranted summary dismissal.

No work record(s) were filed by the respondent.

The letters warning the claimant of his conduct on 5th November, 6th November, 2017 or on any other date are not submitted by the respondent as the employer. The letter suspending the claimant following what the respondent considered to be gross misconduct is not submitted.

The letter inviting the claimant to a disciplinary hearing after his suspension is denied of this court.

What is left is the word of the claimant against that of the respondent. Pursuant to the provisions of section 10(6) and (7) of the Employment Act, 2007 the court has to believe the employee in the absence of any work records.

The case is that the claimant was on 6th November, 2017 at work and following what he considered unfair directions to report to another site at night he was unable and when he reported back to work the next day he was directed to hand over and go home to await for his terminal dues. In the absence of any disciplinary record(s), letter of suspension over any misconduct or gross misconduct, such allegations and line of evidence is without material challenge.

Dismissal of an employee without any justifiable cause, without a hearing or opportunity to give a defence is contrary to the provisions of section 35, 41 and 43 of the Employment Act, 2007 which requires that the employee be issued with notice, a hearing be conducted and termination of employment be based on genuine reasons. Without following these legal procedures, the resulting termination of employment is unfair.

The claimant is entitled to notice pay claimed at Ksh.9,500.00.

The claimant is entitled to compensation equivalent to one (1) month gross wage at Ksh.9,550.00.

On the claim for gratuity, the claimant had not laid the legal basis for the claim of gratuity. Gratuity is available following a private treaty, a collective agreement or where provided for in Wage Orders published by the Minister. In the absence of the same, the claim is declined.

Accordingly, the judgement is hereby entered for the claimant against the respondent for the payment of compensation at Ksh.9,550.00; notice pay at Ksh.9,500.00 and costs.

Delivered at Nakuru this 14th day of February, 2019.

M. MBARU JUDGE

In the presence of: