



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

CAUSE NO. 7 OF 2018

GIDEON MUTUA MUIA.....CLAIMANT

EUNICE WANGECHI WAMITHI.....CLAIMANT

VERSUS

BRINKS SECURITY LIMITED.....RESPONDENT

**JUDGMENT**

1. The Claimants sued the Respondent seeking to recover after a dismissal that occurred on 13<sup>th</sup> October 2017. They had been employed on 25<sup>th</sup> September 2012 and 4<sup>th</sup> December 2012 respectively. They were guards at the Respondent and they aver that the impending termination was not notified to them and they were not paid in lieu of notice. They assert the Labour Officer was not notified of the redundancy and the selection criteria used in declaring them redundant was unlawful. They also sought a declaration their dismissal was unlawful and thus urged the payment of their dues which were compensatory damages, severance pay, house allowance dues, overtime and underpayments totaling Kshs. 2,320,770.40 for Gideon and Kshs. 2,232,454.30.

2. The Respondent filed a defence in which it stated that the contract where the Claimants worked was terminated and the Claimant requested to report to the head office for deployment and they declined. The Respondent denied that the Claimants were entitled to the amounts in the claim and urged the dismissal of the suit with costs.

3. The Claimants testified as did the Respondent's witness James Njeru Ngare. The Claimants said they were employed as guards and would work from 6.00am to 6.00pm. They stated that they worked without rest days and even worked on public holidays. They were not paid house allowance and were not housed by the Respondent. The Claimants stated that the dismissal was without any notice. They stated that the contract was terminated and thus they were unable to continue working at the site. They denied that they were employed at present. The Respondent's witness stated that the Claimants were to report to the head office and get redeployed and they declined. He stated that the Claimants were employed by the company that took over the contract from the Respondent.

4. Parties were to file submissions. The Claimants filed submissions in which they assert the dismissal was on account of redundancy which the Respondent did not apply as required in law. The provisions of Section 2 of the Employment Act were cited where the definition of redundancy is given. The Claimants submit that the loss of employment was involuntary and thus the termination was unfair. They cited the provisions of Section 41 of the Employment Act and called in aid the case of **Ignas Karingo Mghona & 4 Others v Star of Hope International [2016] eKLR** that held the employer has to observe statutory safeguards before terminating an employee's employment on account of redundancy and in default of that, the termination was unfair. They submitted that they were entitled to the relief sought in the claim together with costs and interest.

5. The Respondent submitted that the Claimants were dishonest in their testimony as they denied being in employment. The Respondent submitted that the Claimants had failed to prove their entitlement to the relief sought. The Respondent asserts that the Claimants were neither terminated nor declared redundant. The Respondent submitted that they were to report to the Respondent's offices for deployment which they did not do. The Respondent submits that the Claimants were employed by the Respondent's successor as proved in the case before the court from 1<sup>st</sup> November 2017 immediately after the Respondent's contract terminated. The Respondent submitted that even assuming that the Claimants were dismissed which is not the case, under Section 43 of the Employment Act, the Claimants had a burden to prove the dismissal was unfair. The Respondent submitted that the salary earned was consolidated and the Claimants were therefore estopped from claiming any additional benefit as they accepted the terms of service. The Respondent submitted that the hours of work regulated in the Claimants case were 12 and there was no demonstration that the Claimants worked for longer than is usual.

6. The Claimants thus were employed shortly after the discontinuance of the contract between their employer at the site they guarded. They

were therefore able to mitigate any losses if there was discontinuation of their contracts. In the case before me, there was neither dismissal nor a redundancy declared. The court's jurisdiction was invoked without basis and it is clear the Claimants ought not have filed this suit as there was no hope of any remedy from the court. The suit is dismissed with costs to the Respondent.

It is so ordered.

**Dated and delivered at Nyeri this 13<sup>th</sup> day of February 2019**

**Nzioki wa Makau**

**JUDGE**

I certify that this is a

true copy of the Original

Deputy Registrar