



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT BUNGOMA**

**CAUSE NO. 21 OF 2017**

**KENYA NATIONAL PRIVATE**

**SECURITY WORKERS UNION.....CLAIMANT**

**VERSUS**

**G4S KENYA LIMITED.....RESPONDENT**

**J U D G M E N T**

The grievant Sammy Wanderi Waweru was employed as a security guard by the then Securicor Security Services.

The company later became G4S Security Services (K) Ltd. The grievant worked as driver and crew commander until 29.2.2016 when he was summarily dismissed from employment on allegations of failing to follow procedure when delivering money to client's ATM machine leading to loss of money. He was also accused of unprocedurally signing for overtime with the client.

The grievant testified under oath and stated that he was born in 1972 and studied up to class 8. That he earned Kshs 41,600 at the time of dismissal.

That he worked with a co-custodian and were both dismissed on same allegations.

That his colleague received a normal termination and was paid terminal benefits whereas himself was unfairly summarily dismissed and was denied payment of terminal benefits.

The Grievant prays for the summary dismissal of the grievant to be reduced to normal termination in the amended statement of claim and he be paid terminal benefits.

That the grievant had served the Respondent for many years without blemish and worked with Paul Otieno Odede, the co-custodian.

The grievant said that he carried money to ATM machines in sealed cassettes for about 20 years. He had a clean record.

That Respondent alleges that some money got lost in 2014 in small quantities until March 2015. CW1 stated that he delivered money to an ATM, Bank Managers counted the money in their presence and at times it was excess. That it was for the bank managers to find out the problem and not the guards. The grievant was accused of not reporting these incidents to G4S. The grievant denied the charges as his work was not to count the money. He was an employee of low education and could not do that.

The grievant said he could not open the money cassettes alone. He did so with Paul Otieno and Bank Managers. Grievant said that he was dismissed and not paid terminal benefits after working for 20 years.

Paul Otieno was paid gratuity for 17 years and notice pay which he himself was denied.

Grievant prays for the said relief.

**Response.**

The Respondent filed a statement of response on 27.3.2017 in which it justifies the summary dismissal of the grievant. The Respondent called RW1 Festus Baraka to testify in support of its case. RW1 told the court that the grievant was a driver in ATM operations. That he delivered cash in Transit to ATM machines. The customers where the grievant took money was KCB Nandi Hills Branch.

That the money is prepared by tellers, counted and put in cassettes for delivery. There were always two custodians in transit. The grievant and another.

That on 3<sup>rd</sup> and 11<sup>th</sup>/11/2015, G4s received letters from KCB Nandi Hills claiming shortage of Kshs 488,500 to be paid by G4S. RW1 visited the bank and was told that the grievant and co-custodian had signed for shortages in 2013 to 2015 and that G4S was not made aware of this until then. Upon investigations RW1 discovered that there were loopholes when money was being loaded to the ATM Machine with loaders at times adding cash in the cassettes.

The grievant was subjected to disciplinary meeting and was issued a suspension letter.

Grievant admitted signing liability forms at KCB for shortages and for overtime.

A dismissal was recommended for both custodians according to RW1. RW1 denied knowledge that Paul Otieno was paid full benefits whereas the grievant was dismissed without any payment at all.

RW1 states that the claim has no merit and it be dismissed.

**Determination:**

A careful analysis of the evidences of the grievant (CW1) vis a vis that by RW1 has led the court to conclude that the grievant being a standard 8 level driver of cash in transit vehicle was accused of doing or failing to do matters which were way beyond the scope of his duties and understanding. Grievant was asked to sign papers by the client KCB upon delivering cash in cassettes for filling in ATM machines.

Delivery was overseen by Bank Managers and it would appear that lapse in communication between the Bank and the Respondent was revisited on the two co-custodians unfairly.

The Claimant has proved that the grievant has served the Respondent honestly and diligently for 20 years. That his record was clean.

That the matters he was queried about leading to his dismissal without payment of terminal benefits were beyond his scope of work.

The grievant has also proved that he was unfairly discriminated in that the co-custodian with whom he was accused of similar irregularities and had worked for 17 years was paid his full gratuity and notice pay but the grievant was left out.

RW1 had no answer to these allegations by the grievant stating that he was not aware that Paul Otieno was paid.

It is the court's considered view that there was no justification to summarily dismiss the grievant and deny him terminal benefit accrued in his 20 years of faithful service to the Respondent.

The Respondent had no valid reason to summary dismiss the grievant.

The Court, finds its a suitable case to commute the summary dismissal of the grievant to normal termination and find that the grievant is entitled to payment of service gratuity in terms of the Regulation of Wages (Security Services) Order.

In the final analysis Judgment is entered in favour of the Claimant as against the Respondents as follows:

- a. Payment of service gratuity calculated at 18 days salary for each completed year of service of 20 years worked in the sum of Kshs 499,420/=
- b. Payment in lieu of one month notice in the sum of Kshs 41,600. Total amount Kshs 541,080/=
- c. Interest at court rates from date of filing suit till payment in full.
- d. Costs of the suit.

**DATED, SIGNED and DELIVERED at BUNGOMA this. 1<sup>St</sup> day of FEBRUARY, 2019.**

**HON. M. N. NDUMA, JUDGE**

**EMPLOYMENT AND LABOUR RELATIONS COURT**

**BUNGOMA**

**Appearances:-**

Peter Odima for Claimant

M/s Kipiego for Respondents

Chrispo – Court Assistant.