



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 996 OF 2017**

**JARED ONDIEKI GECHUCHU.....CLAIMANT**

**v**

**BOERA MAIN SECURITY SERVICES LTD..... RESPONDENT**

**JUDGMENT**

1. Although Boera Security Services Ltd (Respondent) entered Appearance through the firm of Moindi & Co. Advocates on 6 July 2017, it did not cause a *Response* to be filed.
2. The Cause therefore proceeded as undefended Cause on 19 February 2019. Jared Ondieki Gechuchu (Claimant) testified and thereafter filed his submissions on 15 March 2019.
3. The Court has considered the pleadings, evidence and submissions.

**Unfair termination of employment**

4. The Claimant was employed by the Respondent in 2009 as a security supervisor and served until 13 February 2017 when he was issued with a notice of termination of employment (summary dismissal).
5. In his testimony, the Claimant denied the validity of the reasons given in the dismissal letter (the reasons were promoting and acting in the interests of a competitor).
6. The Claimant also asserted that he was not afforded an opportunity to be heard.
7. Because this was a case of summary dismissal, the Respondent was under a mandatory obligation to hear the Claimant as demanded by section 41(2) of the Employment Act, 2007.
8. The Claimant's evidence that he was not heard remained un rebutted.
9. Further, the Respondent was under a statutory burden in terms of sections 43 and 45 of the Employment Act, 2007 to prove the reasons for the dismissal, and that the reasons were valid and fair.
10. That statutory burden was not discharged as the Respondent did not lead any evidence.
11. The Court therefore finds that the summary dismissal of the Claimant was unfair.

**Compensation**

12. The Claimant served the Respondent for about 8 years, and in consideration of the length of service, the Court will award the equivalent of 8 months gross wages as compensation (most recent pay slip produced was for September 2016 and indicates gross wage of Kshs 11,900/-).

**Pay in lieu of notice**

13. Since the Claimant was paid by the month, the Court will allow 1 month pay in lieu of notice of Kshs 10,500/-.

**Breach of contract/statute**

## **Leave**

14. The Claimant sought Kshs 84,000/- being untaken leave for the 8 years of service.
15. The Claimant did not suggest that he applied for leave and was denied.
16. Further, section 28(4) of the Employment Act, 2008 circumscribes leave which can be carried forward to at most 18 months.
17. However, there was no evidence led that the Claimant sought and was denied permission to carry forward annual leave.
18. The Court will not therefore allow this head of claim.

## **Underpayments**

19. Apart from producing pay slips for August 2009, October 2009, June 2012, February 2013, March 2014, April 2015 and September 2016, the Claimant did not lead evidence as to salary progression to enable the Court determine the details of underpayments in the course of employment.
20. The head of claim was not proved.

## **Wages for March 2017**

21. Under this head, the Claimant sought Kshs 4,846/-. He is entitled to the same as of right.

## **Severance pay**

22. This was not a case of redundancy and *severance pay* is not applicable as a remedy/due.

## **Conclusion and Orders**

23. The Court finds and declares that the summary dismissal of the Claimant was unfair and awards him

(a) Compensation	Kshs 95,200/-
(b) Pay in lieu of notice	Kshs 10,500/-
<b>TOTAL</b>	<b>Kshs 105,700/-</b>

24. Claimant to have costs on half scale.

**Delivered, dated and signed in Nairobi on this 29<sup>th</sup> day of March 2019.**

**Radido Stephen**

**Judge**

## **Appearances**

For Claimant	Ms. Mulomi instructed by Nyangito & Associates, Advocates
For Respondent	Moindi & Co. Advocates
Court Assistant	Lindsey