



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 1944 OF 2014 CONSOLIDATED WITH CAUSE 1946 OF 2014

PATRICK AMULELE GHALANI.....1ST CLAIMANT

JOSEPH TIENG OBARE.....2ND CLAIMANT

VERSUS

G4S SECURITY (K) LIMITED..... RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 29th March, 2019)

JUDGMENT

The 1st and 2nd claimants filed the statements of claims on 31.10.2014 respectively and through Edwin Maina & Associates Advocates. The 1st claimant prayed for judgment against the respondent for:

- a) Maximum compensation of 12 months x Kshs.25, 420.00 making Kshs.305, 040.00.
- b) One month in lieu of notice Kshs.25, 420.00.
- c) House allowance 10, 000 x 12 months x 16 years Kshs.1, 920, 000.00.
- d) Commuter allowance 5,000 x 12 months x 16 years Kshs.960, 000.00.
- e) Total claim of Kshs.3, 210, 460.00.

The 2nd claimant prayed for judgment against the respondent for:

- a) Maximum compensation of 12 months x Kshs.27, 300.00 making Kshs.327, 600.00.
- b) One month in lieu of notice Kshs.27, 300.00.
- c) House allowance 10, 000 x 12 months x 15 years Kshs.1, 920, 000.00.
- d) Commuter allowance 5,000 x 12 months x 15 years Kshs.900, 000.00.
- e) Total claim of Kshs.3, 054, 900.00.

The claimants further prayed for:

- a) A declaration that the redundancy of the grievants was unlawful, unfair, unprocedural, wrongful,

and unconstitutional.

- b) A declaration that the failure to pay and withholding the grievants' dues and allowances was unlawful and wrongful.
- c) An order requiring the respondent to issue the claimants' certificates of service.
- d) An order that the respondent pays costs of the suits.
- e) An order requiring the respondent to pay interest on the aforesaid due amounts.
- f) Any other order that the Court may deem fit.

The 1st claimant's case is that the respondent employed him from 16.12.1995 to 02.11.2012 when without due procedure and without a valid reason his contract of service was terminated on account of redundancy.

The 2nd claimant's case is that the respondent employed him for 15 years up to 02.11.2012 when without due procedure and without a valid reason his contract of service was terminated on account of redundancy.

In each of the suits the respondent filed a memorandum of reply through Hamilton Harrison & Mathews. The respondent denied the claims and prayers made for the claimants.

There is no dispute that the respondent had employed the claimants as pleaded for the claimants. Further there is no dispute that the claimants' employment was terminated on account of redundancy. The Court has considered the pleadings, the evidence and submissions on record.

The **1st issue** for determination is whether the termination by way of redundancy was unfair or unlawful. The evidence was that the claimants were initially employed as security guards and upon termination of the service as guards each was paid the gratuity or service pay per the Private Security Services Order. The respondent then employed the claimants as technicians under fresh contracts of service signed for that purpose. The appointment as technicians amounted to a promotion of the claimants to managerial cadre. The respondent served each claimant a notice of redundancy dated 02.11.2012 taking effect on the same 02.11.2012. The notice stated that each claimant would be paid redundancy dues including:

- Salary for the days worked up to 02.11.2012.
- Pay for the notice period commencing 03.11.2012.
- Any overtime due as at 02.11.2012.
- Severance pay at 20 days for each completed year of service.
- Leave earned but not taken as at 02.11.2012.
- Medical cover up to the end of the year 2012 under the current terms and conditions of the cover.

The respondent admits that the notice to the area labour officer was shorter than 10 days (being dated 17.10.2012 and received 19.10.2012) and the evidence is that the claimants were not served the prescribed one month notice as provided in section 40 of the Employment Act, 2007. The Court returns that the claimants were not prepared for the redundancy as it was abrupt and contrary to the procedural safeguards in section 40 of the Act. It was the respondent's case that the redundancy was due to change in technology and methodology the respondent desired to apply in service delivery. However, the claimant's case was that the respondent was performing well financially and they would have been alternatively

engaged (even reverting back to serve as security guards) in the respondent's wide spreading establishment that was performing well. The Court has considered the evidence on record and to the extent that the redundancy notice did not provide for the reason for redundancy and therefore the claimants' termination from employment, the respondent has failed to show that as at termination it had a genuine reason to terminate the contracts of service on account of redundancy as envisaged in section 43 of the Act.

The Court finds that the termination was unfair both in procedure and substance.

The 2nd issue for determination is whether the claimants are entitled to the remedies as prayed for. The Court makes findings as follows:

a) The claimants were dedicated and loyal workers with a long clean record of service. The 1st claimant had served for 16 years and the 2nd respondent had served for 15 years of unbroken service. They each desired to continue in employment and each did not contribute to the termination. The Court considers that the claimants were qualified security guards and though they had been promoted to the managerial cadre of technicians for security systems, in view of the looming redundancy the respondent failed to prepare them or even offer them an election to continue in service as security guards. The aggravating factor was that the redundancy dues were then applied to settle loans which the claimants had otherwise properly planned to repay by monthly instalments. The respondent had approved the taking of such loans within 12 months prior to the termination. The Court has considered that the severance pay as submitted for the respondent was higher than the minimum 15 days under section 40 of the Employment Act, 2007. To balance justice in the case each claimant will be awarded 7 months' salaries in compensation for unfair termination under section 49 of the Act. Thus the 1st claimant is awarded Kshs 25, 420.00 x 7 making **Kshs.177, 940.00** and the 2nd claimant **Kshs.191, 100.00** at Kshs. 27, 300.00 per month. Further section 40 of the Act required service of the one month notice which was not served, and then payment of a month's salary in lieu of notice. Accordingly, the Court returns that the 1st claimant is awarded **Kshs 25, 420.00** and the 2nd claimant **Kshs.27, 300.00** per month in lieu of the 30 day's notice under section 30 that was not given at all; the one month pay in lieu of notice having been already paid to the claimants. In that regard, salary for November 2012 is not justified as claimed and prayed for as it will fail.

b) The claimants pray for unpaid house allowance and unpaid commuter allowance throughout the service of 16 and 15 years respectively. The Court returns that the claimants have failed to show the statutory or contractual basis for the claims and the respondent has established that the claimants were paid all the agreed dues during their service period. In any event there was no evidence of a grievance reported about the claims throughout the service and the claims are found to have been unjustified. The respondent established that as guards they were paid house allowance but upon promotion they were paid the agreed consolidated pay and the Court returns that such pay must have had an element of sufficient provision for the claimants to obtain reasonable housing accommodation. The Court also returns that the contracts of service were terminated on 02.11.2012 and the suits were filed on 31.10.2014. The Court finds that the grievances on house allowance and commuter allowance had been continuing and ceased upon termination of the contract on 02.11.2012. Thus the Court returns that the claims were time barred under section 90 of the Employment Act, 2007 which prescribes 12 months of limitation of action after cessation of the continuing injuries like in the instant case.

c) The Court returns that the claimants are entitled to the certificate of service per section 51 of the Act.

In conclusion judgment is hereby entered for the claimants against the respondent for:

1) The declaration that the termination of the claimant's employment by the respondent by way of the redundancy notice of 02.11.2012 amounted to unfair and unlawful termination of their

respective contracts of service.

2) The respondent to deliver to each claimant a certificate of service by 01.05.2019.

3) The respondent to pay the 1st claimant a sum of **Kshs. 203, 360.00** and the 2nd claimant a sum of **Kshs.218, 400.00** by 15.05.2019 failing interest to be payable thereon at Court rates from the date of this judgment till the full payment.

4) The respondent to pay costs of the suit.

Signed, dated and delivered in court at **Nairobi** this **Friday 29th March, 2019.**

BYRAM ONGAYA

JUDGE