



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO. 1573 OF 2015

EVANS MUSA NICHORE.....CLAIMANT

VERSUS

COLLIDALE SECURITY LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 25th October, 2019)

JUDGMENT

The claimant filed the memorandum of claim on 08.09.2015 through Khalwale & Company Advocates. The claimant prayed for judgment against the respondent for:

- a. A declaration that the dismissal of the claimant was wrongful and unfair.
- b. The claimant to be paid terminal benefits including:
 - i. 3 days' salary Kshs. 1, 410.00.
 - ii. One month in lieu of notice Kshs. 9, 500.00.
 - iii. Underpayment of wages 9, 477 x 54 Kshs. 511, 758.00.
 - iv. House allowance Kshs. 22, 800.00.
 - v. Leave for 4 years Kshs. 37, 600.00.
 - vi. 12 months compensation Ksh. 112, 800.00.
 - vii. Service pay Kshs. 76, 140.00.
- c. The respondent to pay costs and interest.

The respondent filed the statement of response to the claim on 27.11.2018 through Mwale & Company Advocates. The respondent prayed that the claimant's suit be dismissed with costs.

There is no dispute that the respondent employed the claimant as a security guard from 17.11.2003.

The claimant's case is that he was injured while on duty and sought to retire early on medical grounds when the respondent suddenly and without reason terminated his employment. The respondent denied that the claimant was injured while on duty but admitted that the claimant sought to retire early.

The evidence is that on 05.07.2015 the claimant wrote to the respondent's operation manager requesting to retire on medical grounds. He stated that he had not been feeling well for the previous one year following an accident that took place on 13.09.2014. He stated he'd cease working on 05.08.2018 (essentially giving a month's notice).

On 08.07.2015 the respondent wrote to the claimant acknowledging receipt of the letter to retire dated 05.07.2015. The respondent rejected the request on account that only a doctor could recommend retirement on medical grounds and further, the alleged assault while on duty was untrue so that the claimant had simply absconded from duty. He was advised that the notice would be treated as a normal resignation effective 04.08.2015.

In his evidence the claimant admitted that he resigned from duty. The Court finds that there was no unfair termination because the claimant desired to leave employment and his desire was granted by the respondent.

Is the claimant entitled to the remedies as prayed for? The Court makes findings as follows:

- a. As the termination was by resignation or early retirement as desired by the claimant, it was not unfair. Compensation and pay in lieu of notice is declined in that regard.
- b. The claimant provided no evidence and submissions to justify the amount prayed for underpayment. The same will fail except **Kshs. 46, 803.90** that the respondent admitted as owing.
- c. The claimant did not particularise the claim and prayer for service pay. The basis for the amount claimed was not established at all and the prayer is declined.
- d. The respondent submitted no evidence to show that the claimant had been paid **Kshs. 1, 410** for 4 days in August 2015 and the claimant is awarded accordingly.
- e. There was no evidence that the claimant took or was paid in lieu of annual leave and is awarded **Kshs. 37, 800.00** under section 28 of the Employment Act, 2007.
- f. As submitted for the respondent the claimant set out to pay minimum statutory wages. There was no element of house allowance. However the claimant has not justified the computation for house allowance as prayed for and the same will fail.

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

- a. Payment of a sum of **Kshs.86, 013.90** by 01.12.2019 failing interest to be payable thereon at Court rates from the date of filing the suit till full payment.
- b. The respondent to pay the claimant's costs of the suit.

Signed, dated and delivered in court at **Nairobi** this **Friday, 25th October, 2019.**

BYRAM ONGAYA

JUDGE