



**REPUBLIC OF KENYA**

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

**CAUSE NO 1066 OF 2014**

**ONESMUS KELI MUNYAO.....CLAIMANT**

**VERSUS**

**XFOR SECURITY SOLUTIONS (KE) LTD.....RESPONDENT**

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

1. The Claimant pleaded that he was employed by the respondent on 31<sup>st</sup> October, 2011 to the position of Operations manager at a salary of Kshs. 180,000/= per month.

2. It was a term of the contract that the Claimant would be on probation for three months from the date of commencement of his contract. For a period of approximately one year since the Claimant was employed he carried out his work diligently. It therefore became to him as a shock when the respondent on 14<sup>th</sup> September, 2012 without any reasonable cause, warning or notice and without giving any termination letter purported to terminate the Claimant's employment. The respondent then promised to pay all the Claimant's benefits and they both signed a certificate of agreement before the Labour Officer but the respondent later refused to pay the Claimant.

3. It was the understanding of the parties that upon signing of the certificate of agreement all parties would have no further claims as against each other.

4. The respondent on its part pleaded that the Claimant was on 31<sup>st</sup> October, 2011 offered a job as operations manager. He however, worked as a human resource manager relative to the experience and supporting documents he had presented.

5. According to the respondent, the Claimant served for only 10 months and 14 days where his work started showing symptoms of negligence and errors. For example, the Claimant had no records of how many employees he had employed, employee details and general staff management. There were further no records of including payment of statutory and related employee needs stipulated by the law.

6. According to the respondents, there was no intention to terminate the Claimant's service however he had by his conduct indicated that he could not perform his duties as required. He was therefore in accordance with section 44 of the Employment Act summarily dismissal.

7. The matter was drawn to the attention of the County Labour Officer and deliberations for settlement were made however at that time something cropped up as new evidence of past mismanagement or embezzlement and the Claimant refused to twin up to discuss the same.

8. In his oral testimony the Claimant further stated that his termination was unlawful and that he had never been issued with any previous warning. According to him the respondent admitted their fault and agreed to pay his dues by instalments but have since never paid any instalment. On 6<sup>th</sup> February, 2013 the respondent claimed he had not returned some of the items they however could not show which items had not been returned.

9. In cross-examination he stated that he worked for about 9 months and that he was terminated on 14<sup>th</sup> September, 2012. No meeting was held. He was simply told his services had ended. No reason was given either. According to him there was nothing to clear as he left all the company's property intact.

10. It was his evidence that at some point there was no remission of statutory dues and this was as per the directive of the directors. According to him they would prepare a schedule but would be told there was no money to pay.

11. On his termination, he stated that there was extensive discussion at the Labour Office and he was conformable with the offer for settlement.

12. The respondent's witness Mr. Lewis Mwakio stated that he was the respondent's HRO. It was his evidence that he knew the reason for the Claimant's termination. There was a closed-door meeting concerned the Claimant's work. It was his evidence that the Claimant was

heard before he was dismissed. He further stated that he was familiar with the agreement at the Labour Office. According to him, the agreement was not honored because the Claimant did not return the respondent's items and that the respondent is always willing to pay the Claimant provided he clears.

13. In cross-examination he stated that some statutory deductions were not remitted and some were wrongly calculated and the respondent was penalized.

14. It is common ground that the Claimant's service was terminated. According to the Claimant, there was no valid or justifiable reason for termination of his service but according to the respondent the termination was due to poor work performance by the Claimant.

15. The parties to the dispute however, met and had what the Claimant described as extensive discussion before the County Labour Office where both parties agreed that the Claimant be paid Kshs. 275,000/=. The Claimant testified that he was satisfied with the settlement and further that it mutually agreed that upon payment of the amount no party should hold any further claim. The respondent has not paid the agreed amount claiming the Claimant has not cleared. According to the Claimant, there was nothing to clear since at the time of termination he left the respondent's property intact. The respondent neither in the pleading or oral evidence in Court did not disclose which of its property the Claimant has not returned. The parties herein having agreed to resolve the issue of termination as set out above and the Claimant having stated he was satisfied with the settlement amount, the Court cannot in the circumstances delve into the issue of the fairness or otherwise of the termination. The Court by its own decree can only proceed to order enforcement of what the parties have agreed. The settlement on the face of it looks reasonable and does not offend any written law.

16. The Court therefore orders that the respondent do pay the claimant the sum of Kshs. 275,000/= with interest from the date of this judgement until payment in full.

17. The Claimant shall further have the costs of the suit.

18. It is so ordered.

Dated at Nairobi this 18<sup>th</sup> day of October, 2019

**Abuodha Jorum Nelson**

**Judge**

Delivered this 18<sup>th</sup> day of October, 2019

**Abuodha Jorum Nelson**

**Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

**Abuodha J. N.**

**Judge**