



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT NAIROBI**

**CAUSE NO. 554 OF 2016**

**JARED BOGONKO ONYANCHA.....CLAIMANT**

**VERSUS**

**INTER SECURITY SERVICES LIMITED.....RESPONDENT**

**(Before Hon. Justice Byram Ongaya on Monday, 6th December, 2019)**

**JUDGMENT**

The claimant filed the memorandum of claim on 07.04.2016 through Eric Ntabo & Company Advocates. The claimant prayed for judgment against the respondent for:

- a) Rest days Kshs.107, 066.40.
- b) Public holidays Kshs.20, 647.52.
- c) Annual leave September 2009 to August 2015 Kshs. 40, 149.90.
- d) Severance pay Kshs.24, 885.00.
- e) 12 months compensation Kshs.119, 304.00.
- f) Total claim Kshs.321, 964.83.
- g) Interest and costs.
- h) Certificate of service.
- i) Costs of the suit.
- j) Any such other or further relief as the Honourable Court may deem fit and just to grant.

The respondent filed on 14.06.2016 the reply to the memorandum of claim and through Okulo & Company Advocates.

There is no dispute that the respondent employed the claimant on a permanent contract effective 01.09.2009 as a security guard. There is no dispute that the claimant was dismissed by the letter of summary dismissal dated 02.06.2015 on account of chit chat while neglecting his assigned work at Cornerstone Apartments. Further the letter stated that the claimant's behaviour had led to termination of the respondent's service contract at the Apartments. Thus the termination was effective 01.06.2019.

The claimant's case is that the termination was unfair because he was not given a notice and a hearing as per section 41 of the Employment Act, 2007 and the reasons were not genuine as per section 43 of the Act because the respondent's service contract ended and that was the reason for the termination and not the alleged reasons.

The claimant testified that on 02.06.2015 he reported at work at 8am. He was assigned duty. He was then telephoned by a manager known as Isaac Opiyo and told to return the uniform. He complied. He was then given the letter of summary dismissal. Prior to the letter there was no

afforded a notice and disciplinary hearing. At termination he earned Kshs.9, 942.00 per month. The claimant testified that he was never drunk and disorderly while on duty and that he had a clean record of service without warnings.

The respondent's witness (RW) was Isaac Okwiry, the respondent's Director. RW testified that the claimant caused the respondent's service contract at the Cornerstone Apartments to be lost. The client saw the claimant and others grouping together and chatting. The claimant was also allegedly intoxicated while on duty and warnings were filed. Thus it was urged that the termination was justified. In cross-examination he confirmed that no warnings had been filed.

The Court has considered the evidence and returns that RW's evidence cannot be trusted because he testified that there were warnings yet none had been filed and further introduced the allegation that the claimant was intoxicated but that had not been pleaded or stated in the letter of summary dismissal. RW provided no evidence to show that the respondent's service contract at the Apartments had been terminated on account of the claimant's alleged misconduct. The Court finds that the termination was abrupt without a notice and the reason for the dismissal has not been established as genuine. The termination was unfair in view of sections 41, 43, 45 and 47(5) of the Act.

The Court has considered the claimant's clean record and his willingness and desire to continue in employment. The Court has considered the mitigating factor that the claimant admitted indeed the service contract had lapsed and that was the only reason for his dismissal. In view of such factors as envisaged in section 49 of the Act, the claimant is awarded 10 months' salaries in compensation making **Kshs.99, 420.00**. He is also awarded one month pay in lieu of termination notice **Kshs.9, 942.00**.

The Court has considered the prayers for rest days, public holidays, and annual leave. They were all continuing injuries which ceased on the date of dismissal on 02.06.2015 and the suit was filed on 09.04.2016. The Court finds that the claimant has established his claims that he worked on the public holidays and he was not paid. Further there is no evidence he was accorded due rest days and annual leave. He is awarded as prayed at **Kshs. 107, 066.00; Kshs.20, 647.00; and Kshs. 40, 149.90** respectively. As it was not a case of redundancy, the prayer for severance pay will fail.

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

- a) Payment of **Kshs.277, 224.90** by 01.02.2020 failing interest to be payable thereon at Court rates from the date of this judgment till full payment.
- b) The respondent to deliver the certificate of service per section 51 of the Act by 15.12.2019.
- c) The respondent to pay costs of the suit.

**Signed, dated and delivered in court at Nairobi this Friday, 6th December, 2019.**

**BYRAM ONGAYA**

**JUDGE**