



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 137 OF 2016

BETWEEN

- 1. MATSUNGU MWANDZIJE DZINARE**
- 2. BATI ALFRED CHUPHI**
- 3. KIDZAO NZAO MAKUTO**
- 4. MWARUWA OMAR MWERO**
- 5. SAMUEL ODHIAMBO SIKUKU**
- 6. FARAJ KAINGU KARISA**
- 7. PATRICK OTARO ASHUMA.....CLAIMANTS**

VERSUS

- 1. BASH HAULIERS LIMITED**
- 2. AL BARAKAT AGENCY LIMITED**
.....RESPONDENTS

Rika J

Court Assistant: Benjamin Kombe

Annette Mbogoh Advocate, instructed by Kituo Cha Sheria Advocates for the Claimants

No appearance for the Respondent

JUDGMENT

1. The Claimants filed their joint Statement of Claim, on 18th February 2016. They state they were employed by the 1st Respondent through its agent the 2nd Respondent. They were employed as Security Guards on diverse dates, between 10th June 2012 and 24th February 2015. Their contracts were

terminated on the ground of redundancy. They dispute the fairness of redundancy, and pray for Judgment against the Respondents in the following terms:-

- a) 1 month salary in lieu of notice.
- b) Service pay.
- c) Annual leave pay.
- d) Equivalent of 12 months' salary in compensation for unfair termination.
- e) Public holiday pay.
- f) House allowance.
- g) Declaration that termination was unfair.
- h) Costs, Interest and any other suitable relief.

The Claimants pray for a principal sum of Kshs. 2,184,533.

2. There are Affidavits of Service indicating the Respondents were served with the Court Processes on different occasions. They did not file any response and failed to attend Court throughout. The Claimants applied to the Court, and were allowed, to have the Claim disposed of through the Pleadings, Documents and Submissions on record. They confirmed the filing of their Submissions, on 20th November 2017.

The Court Finds:-

3. There is undisputed evidence that the Claimants were employed by the 1st Respondent, through the 2nd Respondent, as Security Guards. They were employed on diverse dates, beginning 10 June 2012. They all left on 24th February 2015. They allege they were told by the Respondents work had diminished. They were not issued notices of redundancy. Instead, the Respondents issued them fresh contracts to sign. The Claimants rejected this, as their years of service were not taken into account. They were paid terminal benefits from February 2015, which they state, were not tabulated in accordance with the law. They were paid a rate of Kshs. 524 daily, which they translate at Kshs. 15,720 monthly.

4. The Court is not able to agree with them that their contracts were terminated on the ground of redundancy. They were offered new contracts, which would indicate work was still available, for them to continue in employment. The Respondents merely indicated an intention to restructure the business, as captured in the sample of new contracts exhibited by the Claimants. Not every restructuring exercise, amounts to declaration of redundancy.

5. They did not like the terms and conditions of service offered under the new contracts. They opted to leave, and were offered terminal dues including annual leave pay, service pay and salary of days worked in the last month of employment. They acknowledged receipt of payment of their terminal dues, and discharged the Respondents from future claims. Termination was by agreement of the Parties.

6. The Court does not find justification in the Claimants' turnaround. They accepted what was offered as terminal dues, and discharged the Respondents. They had the choice to accept the fresh contracts and continue in employment. The facts, even in the absence of the Respondents from the proceedings, do not disclose a redundancy situation, little less an unfair redundancy. ***The Claim is hereby dismissed with no order on the costs.***

Dated and delivered at Mombasa this 23rd day of February 2018.

James Rika

Judge