



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO.521OF 2013

ALFRED TABU OKWARA.....CLAIMANT

- VERSUS -

SECURITY GUARDS SERVICES LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 22nd June, 2018)

JUDGMENT

The claimant filed the memorandum of claim on 16.04.2013 through Namada & Company Advocates. The claimant prayed for judgment against the respondent for:

- a) A declaration that the dismissal or termination of the claimant's employment was unlawful and unfair and the claimant is entitled to terminal dues and compensatory damages.
- b) The respondent to pay the claimant Kshs.318, 101.00 being a month's pay in lieu of notice Kshs.10, 969.00; salary for part August, September, October, and November 2012 Kshs.43, 876.00; 12 months' pay in compensation Kshs.131, 628.00.
- c) Interest on (b) above from the date of filing of the suit till payment in full.
- d) Cost of the suit plus interest thereon.

The amended memorandum of response was filed on 15.06.2017 through Nchogu, Omwanza & Nyasimi Advocates.

There is no dispute that the respondent employed the claimant as a guard and the claimant's last pay was Kshs. 10, 969.00 per month.

The respondent's evidence is that the claimant failed to report on duty on 01.08.2012 from 8.00pm to 8.00am. The respondent's customer the claimant had been assigned to provide guarding services filed a complaint with the respondent on 02.08.2012. The customer also reported that certain items had been stolen from the premises. The claimant's uncle worked with the respondent and he reported that he had failed to trace the claimant on 3rd and 5th August 2012 but that the claimant had been seen in a place known as Kawangware on 06.08.2012 and he failed to go to work. On 08.08.2012 a show cause letter was issued.

On 09.08.2012 the claimant reported and explained that he had been attacked on the night of 1st and 2nd September 2012. His account was found not truthful. He was dismissed. He had reported the event at a far off police post on 10.08.2012. The termination letter was dated 15.11.2012 to take effect from 09.08.2012.

The Court finds that the respondent had a valid reason to terminate the employment as envisaged in section 43 of the Employment Act, 2007. Further the Court finds that the respondent accorded the claimant a notice and a hearing as per section 41 of the Act. In particular the claimant testified that he was kidnapped on the night of 1st and 2nd August, 2012 and released on 08.08.2012 but offered no explanation why he reported the matter to the police belatedly on 10.08.2012 and at a police post not in charge of the place he had allegedly been kidnapped from.

In the circumstances, all remedies as prayed for the claimant against the respondent will fail.

In conclusion judgment is entered for the respondent against the claimant for dismissal of the memorandum of claim with costs.

Signed, dated and delivered in court at Nairobi this Friday 22nd June, 2018.

BYRAM ONGAYA

JUDGE