



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 1033 OF 2018

EPHANTUS M. MUNGE .....1<sup>st</sup> CLAIMANT

LEVY M. WAFULA .....2<sup>nd</sup> CLAIMANT

PROTUS W. NASANGALI .....3<sup>rd</sup> CLAIMANT

ERICK O. OLOO .....4<sup>th</sup> CLAIMANT

THOMAS O. WOGAH .....5<sup>th</sup> CLAIMANT

LEVI LISANGALI .....6<sup>th</sup> CLAIMANT

LIVINGSTONE O. KIMONI .....7<sup>th</sup> CLAIMANT

v

KENYA KAZI SECURITY SERVICES LTD.....RESPONDENT

RULING

- 1. On 30 April 2018 (the dates are indicated as 30 April 2017 but the body of the letters refer to events in 2018), Kenya Kazi Security Services Ltd (Respondent) wrote to the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>,5<sup>th</sup> and 6<sup>th</sup> applicants informing them of the termination of their services. The 7<sup>th</sup> applicant was informed of the termination of his employment through a letter dated 9 May 2018.
- 2. The applicants appealed against the termination(s) and on 21 May 2018, the Respondent advised them that the appeals were unsuccessful.
- 3. On the same day, the applicants moved the Court alleging that the terminations were unfair.
- 4. Filed together with the Memorandum of Claim was a motion under certificate of urgency seeking orders

1. ...

2. **THAT** an order of this Honourable Court be issued to quash any suspension and or dismissal letters which were illegally issued to the Claimants/Applicants herein and that they be reinstated to their employment positions with full salary and benefits until this matter is heard and determined by this Honourable Court.

3. **THAT** an order of this Honourable Court be issued to restrain the Respondent, its agents or servants from harassing, intimidating, assaulting, threatening to dismiss any of its employees working with the US Embassy for the purported failure to utilise Guard Electronic Monitoring System until this matter is heard and determined by the Court.

4. **THAT** an order of this Honourable Court be issued to suspend with immediate effect the utilisation of the Guard Electronic Monitoring System (GEMS) pending the hearing and determination of this suit.

5. **THAT** an order of this Honourable Court be issued to COMPEL the Respondent not to continue with any pending or future disciplinary hearings over the alleged failure by the guards to utilise the Guard Electronic Monitoring System issues.

6. **THAT** pending the hearing and determination of this application this Honourable Court be pleased to restrain the Respondent by itself, agents and or servants from implementing the contents of the dismissal letters issued to the Applicants/Claimants herein by the

Respondent.

5. On 22 June 2018, the Duty Court directed the applicants to serve the Respondent for *inter partes* hearing on 11 July 2018.
6. Although the Respondent caused a *Notice of Appointment* to be filed on its behalf on 2 July 2018, no response had been filed to the application when it came up for hearing, 3 weeks after service.
7. The Court therefore declined a request by the Respondent for more time to file a response but allowed it to submit based on the facts as outlined by the applicants, and on the law.
8. The Court took arguments from the parties on 11 July 2018 and in its view, it is not necessary to set out in any detail the contentions by the parties because the law on reinstatement is relatively settled now.
9. It is not in dispute that the applicants' employment contracts were terminated on 30 April 2018. It is also not in dispute that the applicants' employment were governed by the general law of employment and their respective contracts. The applicants were ordinary employees (employment not underpinned by specific statutory instruments such as under the Judicial Service Commission Act or the County Governments Act).
10. Reinstatement, and or orders quashing the dismissals however unfair, would in the circumstances become implicated only after a hearing of both parties' substantive cases on the merits. Reinstatement or an order suspending the dismissals therefore may not be granted at an interlocutory stage/hearing.
11. The applicants also sought an order restraining the Respondent from harassing them or continuing with any disciplinary action against them or other unnamed employees. Considering that the contractual relationship had already been brought to an end, such an order would merely serve an academic purpose.
12. If there are any employees who are still in employment faced with risk of disciplinary action, their identities were not disclosed. It would not be prudent for the Court to issue an order at large within an employment relationship.
13. Lastly, the applicants sought to stop the Respondent from continuing to use the Guard Electronic Monitoring System because the system was irregularly introduced and was also illegal.
14. The Court has looked at the Regulation of Wages (Protective Security Services) Order, 1998. It envisages a clocking system.
15. The Court is therefore unable to stop the utilisation of a system which is contemplated by the law before a hearing on the merits.
16. The motion dated 21 June 2018 is dismissed with no order as to costs.

**Delivered, dated and signed in Nairobi on this 18<sup>th</sup> day of July 2018.**

**Radido Stephen**

**Judge**

**Appearances**

For applicants Mr. Lewei instructed by Naikuni, Ngaah & Miencha Co. Advocates

For Respondent Mr. Makori instructed by Hamilton Harrison & Mathews, Advocates

Court Assistant Lindsey