



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 1174 OF 2017

NELSON MUSALAGANI.....CLAIMANT

VERSUS

SECUREX AGENCIES (K) LTD.....RESPONDENT

RULING

1. Through a notice of motion filed on 22nd June, 2017 the claimant sought orders among others that court grants a mandatory injunction ordering the respondent to pay him the sum of Kshs 152,484 being salary due owing from December, 2016 to May, 2017.
2. The claimant further sought an order of permanent injunction restraining the respondent from victimizing or in any other manner interfering with the claimant's contract of service. The claimant also sought orders that in view of the special circumstances of the dispute, the claimant's case be fast tracked, heard and determined on priority basis.
3. The application was based on grounds among others that the claimant was employed by the respondent in 2009 as a security guard and later promoted as a supervisor in 2004. On 26th December, 2016 he requested for permission to travel Vihiga for Christmas holidays was expected to return on 30th December, 2016. However, due to transport crisis obtaining during the festive season, called the respondent's supervisor and informed him that he (the claimant) would report on 31st December, 2016.
4. Upon resuming work on 31st December, 2016, the claimant was issued with a suspension letter on the fact that he was absent from work on 31st December, 2016. He was asked to report to work on 16th February 2017 and later a disciplinary hearing he was issued with a warning letter and asked to go to Operations Department for assignment of duties but according to him this was not done. He reported to Head of Man Guarding and complained about lack of work but was informed his issue had not reached the Head of Man Guard's desk hence was still not allocated work.
5. On 17th February, 2017 the claimant was called by the "Backup Field Officer" and given assignment commencing on 10th March 2017, however there was no communication from the respondent on payment yet the claimant used to report to work daily. Further on 4th April, 2017 the claimant was issued with "Guard Assignment slip for work but was not assigned duties. He raised the same issue as well as lack of salary which he had not received since 2016.
6. The respondent opposed the application and filed replying affidavit through one Festus Kiptoo who stated among others that the claimant was not entitled the amount requested of Kshs 1152,484 for the months of December, January, February, March, April and May. He further stated that the claimant was afforded a hearing which found that he was liable for absenteeism and a warning letter issued to that effect.
7. In the month of May, the claimant was summarily dismissed and had not presented himself back to the company to do a handing over and to obtain his final dues. The respondent further deponed that during his suspension the claimant engaged in fraudulent use of the company's fuel card to fuel the company's motorbike registration number KMDL 040W.
8. Mr Kiptoo further stated that the claimant was guilty of absenteeism for no reason whatsoever and never reported for duty until 10th March, 2017 making a short lived appearance and appearing again on 10th April, 2017.
9. In the motion the claimant seeks to be awarded Kshs 152,484 being salary for the month of December 2016 through to May 2017. The claimant further seeks an order that the court issues a permanent injunction against the respondent restraining them from interfering with the claimant's contract of service. These are similar prayers the claimant seeks in the main claim. A court of law must avoid granting at the interlocutory stage, orders which in their nature are permanent and a determination of the issue in dispute in the main claim. If the orders sought by the claimant were granted at this stage there would be less incentive to prosecute the main claim. Regarding salary for December, 2016 through to May 2017, the respondent has disputed the claimant's entitlement to such salary on grounds that he absented himself from work and had been summarily dismissed as a consequence.

10. The court would therefore require to hear both parties before deciding the matter. This cannot happen at the interlocutory stage through affidavit evidence. The court will have to hear both parties and their cross examination.

11. The application is therefore found without merit and is hereby dismissed with costs.

12. It is so ordered.

Dated at Nairobi this 6th day of July, 2018

Abuodha J. N.

Judge

Delivered this 6th of July, 2018

Abuodha J. N.

Judge

.....for claimant

.....for respondent