



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA**

**CAUSE NO. 74 OF 2017**

**(FORMALLY KISUMU CAUSE NO.364 OF 2016)**

*(Before Hon. Justice Mathews N. Nduma)*

**KENYA NATIONAL PRIVATE SECURITY WORKERS UNION...CLAIMANT**

**VERSUS**

**SAMO SECURITY LIMITED.....RESPONDENT**

**J U D G M E N T**

By a Memorandum of Claim filed on 13<sup>th</sup> December 2016, the Claimant prays for the following reliefs:-

- i. Arrear salary for September to October 2014, Kshs.19,298.72
- ii. One month salary in lieu of notice Kshs.10,116.15
- iii. Payment in lieu of 4 years untaken leave

@26 days per year .....Kshs.40,464.60

iv. Underpayment of wages for four (4) years

at the rate of Kshs.2,11.15 per month Kshs.220,079.60

v. Refund of unremitted NSSF dues, Kshs. 3,400

vi. Severance Pay Kshs. 28,013.95

vii. Public Holidays not paid (40 days) Kshs. 43,162.24

And

viii. 12 months compensation for unfair dismissal and costs of the suit.

The suit had been dismissed for none attendance by the parties on 29<sup>th</sup> November, 2017 but same was reinstated upon application by the Claimant on 28<sup>th</sup> February, 2018.

The matter proceeded to formal proof on 26<sup>th</sup> July, 2018 since no appearance was entered by the Respondent despite service of Summons and Memorandum of Claim and no Statement of Defence was filed.

The Claimant testified under oath and told the court that he was employed by the Respondent as a Security Guard on 4<sup>th</sup> July, 2011. He earned a monthly salary of Kshs.4,000 initially which was later increased to Kshs.8,000 per month. He worked until 23<sup>rd</sup> October, 2014.

The Claimant was on annual leave when he was called to the office and given a letter of termination. The Claimant was declared redundant. The Claimant was not paid any terminal benefits despite initial promise that he would be paid and tabulation shown to him. He was not paid salary for the month of September and October 2014.

He was a member of the union. He reported the dispute to the union. The same was not resolved. He relied on the statement of claim and produced the annexures as exhibits in support of the claim.

The termination was wrongful and Claimant prays for compensation. The Claimant sought to be paid the claims set out under paragraph 7 (1 – 10) of the Memorandum of Claim. He also sought costs and interest.

### **Determination**

The Operations Manager of the Respondent wrote a letter dated 23<sup>rd</sup> October, 2014 informing the Claimant that his services were terminated on grounds of redundancy with effect from 11<sup>th</sup> November, 2014. The Claimant was offered 16 days salary for days worked in October 2014, one month's salary in lieu of notice and severance pay calculated at 18 days salary for every completed year of service. The letter was produced as Exhibit 1.

The tabulation produced in court also included a refund of NSSF in the sum of Kshs.3,400. Total offer by the Respondent amounted to Kshs.49,898.72.

The Claim before court is not defended, however the Claimant bear the onus of proving the claims on a balance of probabilities in terms of section 107 and 108 of the evidence Act, Cap 80 Laws of Kenya.

The Claimant has proved the following claims on a balance of probabilities and the same are awarded as prayed:-

- i. One month salary in lieu of notice Kshs.8,000/-.
- ii. Arrear salary for September and October Kshs.16,000/-
- iii. Refund of NSSF Kshs.3,400/-
- iv. Severance pay calculated at 18 days salary for each
- v. completed year of service for 4 years Kshs.32,000.

### **Compensated**

It is evident that the Claimant was declared redundant without following section 40 of the Employment Act. No Notices were given to the Claimant and the labour office. No terminal benefits were paid upon termination. No consultation was done as to why the declaration of redundancy targeted the Claimant.

The declaration of redundancy was both substantively and procedurally unfair and in violation of section 40, 41, 43 and 45 of the Employment Act. The Claimant is entitled to compensation in terms of section 49 (1) (c) as read with sub-section 49(4) of the Act.

In this respect, the Claimant had served 4 years, was not paid terminal benefits upon termination, wished to continue working and suffered loss and damage as a consequence of the sudden termination.

The Claimant is awarded six (6) months' salary in compensation for the wrongful and unfair termination in the sum of Kshs.48,000.

Judgment is entered in favour of the Claimant as against the Respondent as follows:-

- i. Kshs.8,000 in lieu of notice.
- ii. Kshs.16,000 arrear salary.
- iii. Kshs.3,400 – NSSF refund.
- iv. Kshs.32,000 Severance Pay.
- v. Kshs.48,000 in compensation.

Total Amount Kshs.107,400.

- vi. The award is payable with interest at court rates from date of filing suit in respect of (i), (ii), (iii) & (iv) above and from date of Judgment with respect to (v) above till payment in full.

vii. Respondent to pay costs of the suit.

**Dated at Bungoma this 28<sup>th</sup> day of September, 2018.**

**Mathews N. Nduma**

**Judge**

**Appearances**

Mr. Musiega for Claimant/Applicant

M/s. Athunga for Respondent

Chrispo – Court Clerk