



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT MOMBASA
CAUSE NO 143 OF 2017
CONSOLIDATED WITH
CAUSES NO 144 OF 2017 AND NO 495 OF 2017

MOHAMED SULEIMAN SUMUNI.....1ST CLAIMANT
 FLORENCE MUTIO MWEMA.....2ND CLAIMANT
 LAMECH NDORO.....3RD CLAIMANT
 VERSUS
 ONE WAY CLEANING SERVICES LIMITED.....RESPONDENT

JUDGMENT

Introduction

1.This consolidated cause is brought by Mohamed Suleiman Sumuni, Florence Mutio Mwema and Lamech Ndoro against their former employer, One Way Cleaning Services Limited. The Claimants’ claims are contained in Memoranda of Claim dated 17th February 2017 and 20th June 2017. The Respondent filed its Responses on 26th July 2017 and 3rd August 2017.

2.By consent of the parties, Cause No 143 of 2017 was used as the test case.

The Claimants’ Case

3.The 1st Claimant, Mohamed Suleiman Sumuni states that he was employed by the Respondent as a cleaner in 2008. He was not issued with a written contract of employment. He earned a monthly salary of Kshs. 8,800.

4.The 1st Claimant worked for the Respondent until August 2014 when his employment was terminated on the ground that his services were no longer required. He states that the termination of his employment was unlawful and unfair. He therefore claims the following:

- a)1 month’s salary in lieu of notice.....Kshs. 8,800
- b)12 months’ salary in compensation.....105,600
- c)Certificate of service
- d)Costs plus interest

5.The 2nd Claimant, Florence Mutio Mwema states that she was employed by the Respondent also in the position of cleaner effective 1st September 2007. She too was not issued with a written contract of employment. Her monthly salary was Kshs. 8,500.

6.The 2nd Claimant’s employment was terminated in August 2014 on the ground that her services were no longer required. She terms the termination unlawful and unfair and claims the following:

- a)1 month's salary in lieu of notice.....Kshs. 9,350
- b)12 months' salary in compensation.....112,200
- c)Certificate of service
- d)Costs plus interest

7.The 3rd Claimant, Lamech Ngoro was employed by the Respondent as a cleaner on 1st September 2007. He was not issued with a written contract of employment. He was paid a monthly salary of Kshs. 9,350.

8.The 3rd Claimant worked until August 2014 when his employment was terminated on the ground that his services were no longer required. He claims that the termination of his employment was unlawful and unfair and now seeks the following:

- a)1 month's salary in lieu of notice.....Kshs. 9,350
- b)12 months' salary in compensation.....112,200
- c)Certificate of service
- d)Costs plus interest

The Respondent's Case

9.In its Responses to the Claimants' claims, the Respondent denies terminating the Claimants' employment and states that the Claimants themselves left employment without notice after the Respondent's contract with Kenya Ports Authority was terminated. With specific reference to the 1st Claimant, the Respondent states that upon leaving its employment, he proceeded to work for Norgen Enterprises who had been awarded the contract by Kenya Ports Authority.

Findings and Determination

10.There are two (2) issues for determination in this case:

- a)Whether the Claimants have made out a case for unlawful termination of employment;
- b)Whether the Claimants are entitled to the remedies sought.

Unlawful Termination?

11.The Claimants state that their employment was unlawfully terminated in the month of August 2014 on the ground that their services were no longer required. The Respondent on the other hand states that the Claimants themselves left employment upon expiry of the Respondent's contract with Kenya Ports Authority.

12.The Respondent's Mombasa Zone Manager, John Mutisya Kiio told the Court that upon expiry of the Respondent's contract with Kenya Ports Authority, the Claimants went to work for Norgen Enterprises who had been awarded the contract. In support of this averment, the Respondent produced a copy of a job identity card belonging to the 1st Claimant.

13.The witness claimed to have obtained the job identity card from the 1st Claimant but admitted that he had not sought authority to photocopy it. The legality of the said document was therefore compromised and the Court assigned it no probative value. No similar documents were produced on account of the 2nd and 3rd Claimants.

14.From the evidence on record, it appears that the Claimants were designated to work in execution of the Respondent's contract with Kenya Ports Authority. It is also evident that the said contract came to an end and was not renewed. The Respondent was notified of the non-renewal of the contract by letter dated 25th June 2014.

15.It would appear however that the Respondent did not notify the Claimants of the non-renewal of the contract with Kenya Ports Authority. How then did the Respondent expect the Claimants to know that their employment was in jeopardy? The Court finds and holds that the Respondent failed in its obligation to the Claimants in this regard. The Claimants' exit from the Respondent's employment had the marks of unlawful and unfair termination and they are entitled to compensation.

Remedies

16.In light of the foregoing findings, I award each of the Claimants three (3) months' salary in compensation. In arriving at this award, I have taken into account the Claimants' length of service tampered with the reason for termination being the non-renewal of the Respondent's contract with Kenya Ports Authority. I make a further award of one (1) month's salary in lieu of notice.

17. In the end I enter judgment in favour of the Claimants in the following terms:

1st Claimant: Mohamed Suleiman Sumuni

a) 3 months' salary in compensation.....Kshs.26,400
b) 1 month's salary in lieu of notice.....8,800
Total.....35,200

2nd Claimant: Florence Mutio Mwema

c) 3 months' salary in compensation.....Kshs.25,500
d) 1 month's salary in lieu of notice.....8,500
Total.....34,000

3rd Claimant: Lamech Ndoro

a) 3 months' salary in compensation.....Kshs.28,050
b) 1 month's salary in lieu of notice.....9,350
Total.....37,400

18. The award amounts will attract interest at court rates from the date of judgment until payment in full.

19. The Claimants are also entitled to certificates of services plus costs of the case.

20. Orders accordingly.

DATED SIGNED AND DELIVERED AT MOMBASA THIS 11TH DAY OF OCTOBER 2018

LINNET NDOLO

JUDGE

Appearance:

Miss Kitoo for the Claimants

Mr. Masila for the Respondent