



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1544 OF 2012

(Before Hon. Justice Hellen S. Wasilwa on 3rd October, 2018)

BERNARD JUMA OWILI CLAIMANT

VERSUS

LAVINGTON SECURITY LIMITED RESPONDENT

JUDGEMENT

1. The Claimant herein filed his Memorandum of Claim on 3/9/2012 in person claiming wrongful and unfair termination of his services and failure by the Respondent to pay his terminal benefits.

2. The Claimant's case is that he was employed by the Respondent in November 2008 as a Guard earning a salary of 8,500/= per month. He avers that he served the Respondent with loyalty and diligence until February 2012 when the Respondent unlawfully terminated his services without notice and also refused to pay him his terminal benefits.

3. He gave his oral evidence in Court and stated that he was working as a Receptionist at times. He contends that he had been deployed to different assignments and the last was Kenya Methodist University (KEMU) at Mathare. He worked at this assignment upto 22.2.2012. Then he was deployed at the Respondent's office. He stayed at the office working without any pay and then his supervisor told him to go home and he would call him when work was available. He was never called back.

4. The Claimant exhibited evidence that he used to work for the Respondent. In cross-examination, the Claimant stated that he never used to go on leave and used to work overtime for which he was never paid. His house allowance was also not paid and they were never issued with a payslip.

5. He seeks payment of his dues as follows:-

1. 1 month salary in lieu of notice – 8,500/=

2. Salary arrears – 8,500/=

3. House allowance – 45,900/=

4. Overtime pay – 244,800/=.

5. Annual leave – 17,850/=

6. Compensation for unfair termination – 102,000/=

Total = 427,550/=

6. The Respondent opposed this claim. They filed their Memorandum of Reply on 21/5/2013 through Ashfords & Company Advocates. They admit employing the Claimant in November 2008 but aver that the Claimant had been underperforming and was required to undergo some refresher course. He disappeared from work and only reappeared on 4.4.2012 having stayed away for one month.

7. The Respondents seek dismissal of the suit and payment of notice pay from the Claimant. The Respondent aver that the Claimant was paid

all his dues plus house allowance within the consolidated salary.

8. The parties filed their respective submissions.

9. I have considered the evidence and submissions of the Parties. The Respondent have admitted employing the Claimant as pleaded but in terms of termination, it is their contention that he absconded duty.

10. The Claimant on his part avers that he was dismissed unfairly. The Claimant consulted Kituo Cha Sheria who wrote the Respondents a demand letter on 20/5/2012. This was never responded to. Whereas the Respondent avers that the Claimant absconded duty, there is no indication that they wrote to him seeking his whereabouts given that they had a contract with him which contained his known address. The Respondents also never responded to the demand notice from Kituo Cha Sheria.

11. It is my finding that despite the Respondent alleging that Claimant absconded duty, the conduct of the Respondent gives a different story and points to the position given by the Claimant that he was dismissed.

12. There is no valid reason for this and no due process was ever followed as envisaged under Section 41 of Employment Act. I therefore find the dismissal of the Claimant unfair and unlawful. I find for Claimant and award him as follows:-

1. 1 month salary in lieu of notice = 8,500/=.

2. Salary for February 2012 = 8,500/=.

3. House allowance not paid over the year = 15% of 8,500 x 36 months which cover the period where the limitation period had not set is = 45,900/=.

4. 8 months salary as damages for unlawful termination = 8 x 8,500 = 68,000/=.

TOTAL = 130,900/=

5. The rest of the claim is not proved.

6. The Respondent will pay costs of this suit plus interest at Court rates with effect from the date of this judgement.

Dated and delivered in open Court this 3rd day of October, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Ogari holding brief for Mathenge for Respondent – Present

Claimant – Absent