



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA**

**CAUSE NUMBER 539 OF 2016**

**BETWEEN**

**SULEIMAN MOHAMED MARONGO.....CLAIMANT**

**VERSUS**

**SENACA EAST AFRICA LIMITED.....RESPONDENT**

*Rika J*

*Court Assistant: Benjamin Kombe*

*Isaac Onyango & Company, Advocates for the Claimant*

*Ngunjiri & Company, Advocate for the Respondent*

**JUDGMENT**

1. The Claimant filed his Statement of Claim on 11<sup>th</sup> July 2016. He states that he was employed by the Respondent Company as a Security Guard, in June 2008. His contract was unfairly terminated by the Respondent, on 30<sup>th</sup> June 2014. There was no notice, no hearing, and no reasons to justify termination. His last salary was Kshs. 10,000 monthly. The Claimant prays the Court to find termination was unfair and unlawful and grant Judgment against the Respondent for:-

- a) 1 month salary in lieu of notice at Kshs. 10,000.
- b) Annual leave pay of 5 years at Kshs. 50,000.
- c) Service pay at the rate of 1 month salary for each complete year of service at Kshs. 70,000.
- d) 12 months' salary in compensation for unfair termination at Kshs. 120,000
- Total.....Kshs. 250,000
- e) Certificate of Service to issue
- f) Costs
- g) Interests
- h) Any other suitable order

2. Notice of Summons and Copy of the Statement of Claim were served upon the Respondent on 29<sup>th</sup> July 2016. The Respondent filed its Statement of Response with the leave of the Court on 12<sup>th</sup> October 2016. Its position is that the Claimant deserted, after being instructed to transfer to Nairobi from Mombasa. His Claim has no merit.

3. The Claimant gave evidence on 14<sup>th</sup> November 2017. The Respondent did not attend Court, and proceedings closed on 14<sup>th</sup> November 2017. The Respondent filed an Application to reopen the proceedings, on 8<sup>th</sup> December 2017. The Application was allowed on 14.2.2018, and an order made to have the Claimant testify on 28<sup>th</sup> May 2018, for a second time. The Respondent failed to present its case, and proceedings closed on 28<sup>th</sup> September 2018.
4. The Claimant told the Court he was called by Respondent's Radio Controller on the date of termination. He was told there was an order from above, that he returns Respondent's tools of trade.
5. The Claimant sought the assistance of his Trade Union, Kenya National Private security Workers' Union. The Union wrote to the Respondent, demanding that Claimant is paid compensation and terminal dues. The demand letter is dated 1<sup>st</sup> August 2014.
6. The Respondent wrote to the Claimant on 18<sup>th</sup> August 2014, after termination, and after demand letter had issued, transferring the Claimant to Nairobi. The Claimant replied to the Respondent on 19<sup>th</sup> August 2014, pointing out that he had been out of employment for 2 months, and did not have any money to facilitate his transfer. There was no response from the Respondent.
7. The Respondent, as noted elsewhere, did not give any evidence.

**The Court Finds:-**

8. The Claimant was employed by the Respondent Company between January 2008 and 30<sup>th</sup> June 2014.
9. There is no evidence that the Claimant deserted, as alleged by the Respondent. The Claimant's Union wrote to the Respondent on 30<sup>th</sup> June 2014. It was stated in this letter that the Claimant's contract was terminated on 30<sup>th</sup> June 2016. The Union asked for payment of terminal dues and remedy under Section 49 of the Employment Act.
10. The Respondent did not respond, challenging the assertion that termination took place, as stated by the Claimant.
11. Instead, the Respondent wrote to the Claimant on 18<sup>th</sup> August 2014. Termination having taken place earlier, the Court can only think of this letter of transfer as an offer of reinstatement made by the Respondent to the Claimant.
12. However, the offer was not above board. Firstly, the Respondent failed to acknowledge that termination had taken place. Secondly, the Respondent did not acknowledge to have initiated termination. Thirdly, the Claimant had been out of work for 2 months. He did not have an income, and was not facilitated to transfer. The offer for transfer was not a genuine offer, but made to enable the Respondent advance the position that the Claimant had declined transfer and deserted.
13. No valid reason was shown to justify termination. There was no hearing in any form. There was no notice. Termination was unfair under Sections 41, 43 and 45 of the Employment Act 2007.
14. ***The Claimant is granted 1 month salary in lieu of notice at Kshs. 10,000.***
15. ***He is allowed equivalent of 5½ months' salary in compensation for unfair termination at Kshs. 55,000.***
16. N.S.S.F Statements on record show the Claimant was actively subscribed to N.S.S.F. If there were few occasions during which contributions were not remitted, this is something the Claimant can pursue, with the enforcement mechanism under the N.S.S.F regime, without asking the Court to avail the service pay regime.
17. The Respondent states that the Claimant had exhausted his annual leave, at the time of termination. In his submissions and evidence, he did not come out clearly on annual leave. He claims 30 days of annual leave for 5 years. He does not point out the law or contractual provision, availing to him 30 days of annual leave. He does not say during which of the 7 years worked, leave was denied over a period of 5 year.
18. The prayers for service pay and annual leave pay are rejected.

**IT IS ORDERED:-**

- a) Termination was unfair.***
- b) The Respondent shall pay to the Claimant 1 month salary in lieu of notice at Kshs. 10,000 and equivalent of 5½ months' salary in compensation for unfair termination at Kshs. 55,000 – total Kshs. 65,000.***
- c) Certificate of Service to issue.***
- d) Costs to the Claimant.***
- e) Interest granted at 14% per annum from the date of Judgment till payment is made in full.***

**Dated and delivered at Mombasa this 14<sup>th</sup> day of December 2018.**

**James Rika**

**Judge**