



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI**

**CAUSE NO.709 OF 2013**

**JULIUS AUKA ONGADI.....CLAIMANT**

**- VERSUS -**

**PATRIOTIC GUARDS LIMITED..... RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 7<sup>th</sup> December, 2018)

**JUDGMENT**

The claimant filed the memorandum of claim on 16.05.2013 through Namada & Company Advocates. The prayers are for judgment against the respondent for:

- a. A declaration that the dismissal or termination of the claimant's employment was unlawful and unfair and that the claimant is entitled to payment of his terminal dues and compensatory damages.
- b. An order for the respondent to pay the claimant terminal benefits and compensation amounting to Kshs.429, 000.00 (being one month salary in lieu of notice Kshs. 13, 000.00; unpaid salary for 16.06.2012 to 13.08.2012 Kshs. 26, 000.00; annual leave for 6 years Kshs. 78,000.00; and 12 months compensation Kshs.156, 000.00).
- c. Interest on (b) above from the date of filing the suit till payment in full.
- d. Costs of the suit plus interest.

The reply to the memorandum of claim was filed on 07.10.2013 through Musili Mbiti & Company Advocates. The respondent prayed that the claim be dismissed with costs.

There is no dispute that the respondent employed the claimant as a guard effective 16.04.2002. At the material time of termination of the contract of service, the respondent had a contract to provide security services to African International University. The claimant was deployed at the University and his last day at work was 01.08.2012 when the contract between the University and the respondent was terminated. The claimant testified that the respondent's director told him that he had caused the contract between the respondent and the University to be terminated. The director then sacked all employees deployed to the University assignment. That was on 13.08.2012. The claimant testified that he was not given a show cause letter and he was locked out and he was told in view of his causing the assignment to end, he could not be retained in employment. The claimant denied absconding from work effective 13.08.2012. He prayed for unpaid salary from 16.06.2012 to 13.08.2012.

The respondent did not call a witness to rebut the claimant's account of the separation. The Court returns that the respondent failed to establish the reason for termination as envisaged in section 43 of the Employment Act, 2007. The evidence was that the claimant was not given a termination notice and a hearing as envisaged in section 41 of the Act if indeed he had absconded or caused the assignment with the University to be terminated. The Court has considered that the claimant did not have a clean record of service and there were warnings on record. Otherwise he had delivered on his assignments and he had a legitimate expectation to continue in service. The Court finds that the abrupt termination was unfair in view of the long and unbroken service of about 10 years. He is awarded 10 months' gross salaries in compensation under section 49 of the Act making **Kshs.130, 000.00**. He is also awarded **Kshs. 13, 000.00** in lieu of one month termination notice.

The claimant testified that he was not paid 16.06.2012 to 13.08. 2012 and he is awarded **Kshs. 26, 000.00** as prayed for. Pay in lieu of leave for 2002 -2004, 2007, 2009 was obviously time barred under section 90 of the Act which prescribes 12 months for continuing injuries running from the date of cessation. However the claim for leave not taken and not paid for 2011 and 2012 is found justified as per the claimant's evidence and is awarded at **Kshs. 26, 000.00**.

In conclusion judgment is hereby entered for the claimant against the respondent for:

- a. The declaration that the termination of the contract of service between the parties was unlawful and unfair.
- b. The respondent to pay the claimant a sum of **Kshs. 195, 000.00** by 31.12.2018 failing interest at Court rates to run from the date of the suit till full payment.
- c. The respondent to pay the claimant's costs of the suit.

**Signed, dated and delivered** in court at **Nairobi** this **Friday 7<sup>th</sup> December, 2018.**

**BYRAM ONGAYA**

**JUDGE**