



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO 1380 OF 2014

BENJAMIN BARUDI MULUPI.....CLAIMANT

VS

BRINKS SECURITY SERVICES LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. By a Memorandum of Claim dated 14th August 2014 and filed in Court on 18th August 2014, the Claimant has sued the Respondent for unlawful dismissal and failure to pay terminal dues.
2. The Respondent filed a Response on 8th April 2015 but did not attend the hearing in spite of due service. The Court therefore heard the Claimant *ex parte* on 22nd September 2016. The Claimant filed final submissions on 24th October 2016.

The Claimant's Case

3. The Claimant was employed by the Respondent as a Tailor at a monthly salary of Kshs. 16,000 from 19th June 2013.
4. On 1st July 2014, the Claimant was issued with a termination letter on allegations of failure to work extra hours as required and refusal to take instructions from his seniors. He claims that the termination was unlawful and unfair. He seeks the following remedies:

- a) A declaration that the termination of his employment was unlawful and unfair
- b) 12 months' salary in compensation.....Kshs. 192,000
- c) One month's salary in lieu of notice.....16,000
- d) Leave pay for one year.....16,000
- e) Costs plus interest

The Respondent's Case

5. In its Response dated 30th March 2015 and filed in Court on 8th April 2015, the Respondent denies

terminating the Claimant's employment. It is the Respondent's case that the Claimant deserted duty after being asked by his seniors to work extra hours in order to accomplish some urgent work which he declined and instead left the premises.

6. The Respondent avers that the requisite steps were followed in the Claimant's termination adding that the Claimant was very rude and had committed acts of insubordination. The termination was therefore legal and warranted.

Findings and Determination

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

- a) Whether the termination of the Claimant's employment was lawful and fair;
- b) Whether the Claimant is entitled to the remedies sought.

The Termination

8. The termination of the Claimant's employment was effected by letter dated 1st July 2014 stating as follows:

"Dear Sir,

RE: TERMINATION NOTICE

The above matter refers.

On 30/6/2014, you were required to work extra hours in order to accomplish what was set for you but instead you declined the instructions from your seniors and opted to go home having not completed your work which was urgently needed. You were also instructed to show cause why disciplinary action should not be taken against you and you also declined.

The management has lost faith in you and therefore this letter serves as a Seven days' notice of intended termination. You are required to handover all company property in your possession on 7th July 2014 upon which your dues will be paid less advances if any.

Yours faithfully,

(Signed)

NDUKU MUSUMBI

Managing Director"

9. In its Response to the claim, the Respondent states that the Claimant deserted duty after being asked to work extra hours. The Respondent thus denies terminating the Claimant's employment. The termination letter on the other hand cites the Claimant's refusal to work extra hours as the reason for the termination. The Respondent did not call any evidence to clarify this apparent contradiction.

10. Further, while the termination letter states that the Claimant had defied instructions to show cause why disciplinary action should not be taken against him, there was no evidence of any show cause notice having been issued prior to the termination.

11. In light of this, the Court has reached the conclusion that the Respondent has failed to establish a valid reason for terminating the Claimant's employment as required under Section 43 of the Employment Act. Additionally, it is evident that in effecting the termination, the Respondent failed to comply with the

mandatory procedural fairness requirements set out under Section 41 of the Act.

Remedies

12. Overall, I find the termination of the Claimant’s employment substantively and procedurally unfair and award him three (3) months’ salary in compensation. In making this award I have taken into account the Claimant’s length of service as well as the Respondent’s conduct in the termination process. I further award the Claimant one (1) month’s salary in lieu of notice. In the absence of any leave records, the claim for leave pay succeeds and is allowed.

13. Finally I enter judgment in favour of the Claimant in the following terms:

- a) 3 months’ salary as compensation.....Kshs. 48,000
- b) 1 month’s salary in lieu of notice.....16,000
- c) Leave pay for 1 year (16,000/30x21).....11,200
- Total.....75,200**

14. This amount will attract interest at court rates from the date of judgment until payment in full.

15. The Claimant will have the costs of this case.

16. It is so ordered.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 20TH DAY OF JANUARY 2017

LINNET NDOLO

JUDGE

Appearance:

Mr. Mulaku for the Claimant

No appearance for the Respondent