



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO. 224 OF 2016

CONSOLIDATED WITH CAUSE NO 225 OF 2016

EVANS ONYANGO EMASU

ANTONY EWAGAT SAMBURUMO.....CLAIMANTS

VS

BRINK SECURITY SERVICES LTD.....RESPONDENT

JUDGMENT

Introduction

1. This is a claim for terminal dues plus compensation or unlawful and unfair termination of the claimants' employment by the respondent on 31.1.2015. It is the claimants' case that they were employed from 5.8.2013 and 1.3.2012 respectively as a security guards earning ksh.9500 per month and worked continuously until 31.1.2015 when they were laid off without notice on ground that the respondents contract with one of her clients San Valencia Ltd had been terminated. It is further claimants' case that the procedure followed in terminating their services was in breach of the law and prayed for compensation plus salary in lieu of notice.

2. As regards the claim for accrued employment dues, the claimants aver that during their entire period of service, they were underpaid in terms of salary per month and worked overtime. In addition they aver that they never went for their annual leave and worked for 7 days in a week without any off days or public holidays.

3. The respondent never filed any defence to the suit despite service of summons and as such the suit proceeded exparte by way of written submissions on the basis of the pleadings, witness statements and document evidence filed by the claimants.

Analysis and Determination

4. After careful consideration of the material presented to the court, it is not disputed that the claimants were employed by the respondent for a monthly salary of kshs.9,500 between 1.3.2012 and 31.1.2015. It is further not disputed that the reason for the termination of the claimants employment was lack of work after a client terminated her contract for services with the respondent. The issues for determination are:-

a. Whether the termination of the claimants employment was unfair.

b. Whether the reliefs sought should be granted.

Unfair Termination

5. Under section 40 of the Employment Act, an employer is barred from declaring the employment of his employee redundant before serving at least one month notice to the employee or his trade union, and the Labour officer. In addition to the notice the employer must do a fair selection process of the employees to be laid off and thereafter pay them all their accrued employment benefits plus severance pay. In this case no notice was served on both the claimants and the Labour Officer before the termination on ground of redundancy. Consequently the termination was both unfair and unlawful procedurally within the meaning of section 40 and 45 (2) and 5 of the Employment Act.

Reliefs

Notice and Compensation

6. Under section 49(1) and (4) of the Act, I award the claimants one month salary in lieu of notice plus 3 months gross salary as compensation for unfair termination. In making the said award I have considered the short period served by the claimant. Based on the minimum wage under 2013 Wage Order, they will get ksh.12,042.80 for notice and kshs.36,128.40 as compensation for unfair termination.

Leave outstanding

7. The first claimant prays for one and a half years leave on pro rata basis equaling to 31.5 leave days. He is therefore awarded kshs.14,590.32 for the leave earned. The second claimant prayed for 2 years leave and he is awarded Kshs.19,453.75.

Salary underpayment

8. The first claimant was receiving kshs.9,500 per month from August 2013-31.1.2015 which is a total of 18 months. His correct was kshs.12,042.80 and as such the total under payment was kshs.12,042.80-9,500 x 18 equaling to kshs.45,770.40. He is however awarded kshs.45,756 because that is the sum he prayed for. The under payment for the second claimant for 20 months between May 2013 – January 2015 was Kshs.2542x24=50,840 and it is so awarded.

Certificate of Service

9. The claimants are is entitled to a Certificate of Service as provided for under section 51 of the Employment Act.

Disposition

10. For the reasons stated above I enter judgment for the claimants as follows:

a. 1st claimant **Kshs.108,517.52**

b. 2nd claimant.....**Kshs.118,464.95**

Kshs.226,982.47

The claimants will also have costs and interest in addition to certificate of service.

Signed, dated and delivered at Mombasa this 13th day of January 2017.

O.N. MAKAU

JUDGE