



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF

KENYA AT NAIROBI

CAUSE NUMBER 2222 OF 2014

SEBASTIANO ABANGI ALFRED.....CLAIMANT

VERSUS

PERIMETER PROTECTION LIMITED.....RESPONDENT

JUDGEMENT

1. The claimant herein pleaded that he was employed on 9th July, 1997 as Security Guard and continuously worked with due diligence until 15th July, 2014 when due to traffic he reported to work at 7:30 am instead of 6.00 a.m. and was issued with a warning and suspension letter. Upon returning from suspension he was again sent on compulsory leave for 28 days without pay.
2. Upon his return from the compulsory leave on 3rd September, 2014 the respondent's manager dismissed him from employment by issuing him with a letter dated 27th August, 2014 alleging that he was dismissed for wilful failure to perform duties, deteriorated performance and reporting to duty while drunk on several occasions unable to perform his duties. The claimant pleaded that the reasons for dismissal were false not proven against him and unknown to him prior to the issuance of the dismissal letter. The claimant therefore contended that the respondent's action of dismissing him on the basis of these reasons was therefore unfair and contrary to the Employment Act and the Constitution.
3. The respondent on its part averred that the claimant was employed as a security guard at a basic pay of Kshs 9,781 and house allowance of Kshs 1,476 at the time of dismissal. The respondent denied the claimant worked without rest days without payment. According to the respondent, he used his annual leave while in employment. The respondent further pleaded that on the material day the claimant reported to his workstation at Lifecare International late and was on the same day issued with a warning letter which the claimant responded to citing lack of money.
4. Further on 18th July, 2014 the claimant voluntarily applied for leave which was duly approved with effect from 6th August, 2014 to 2nd September, 2014. It was the respondent's position that the nature of duties assigned to the claimant required service delivery to the satisfaction of clients. The respondent's clients however spotted the claimant's drunkenness, laxity and carelessness at work upon which warning letters were issued to him but he failed or refused to heed the warnings necessitating dismissal.
5. According to the respondent, it followed due process in terminating the claimant's employment and that all the benefits legally due to the claimant were paid on termination vide a salary voucher for the month of September, 2014 and the claimant acknowledged receipt to be in full and final settlement of his terminal dues. In his oral testimony in court, the court noted that the witness was a little incoherent and

could not remember when he was employed and when he was dismissed.

6. According to him, he disagreed with the manager, Mr Munyi. He accused Mr Munyi of wanting a bribe of Kshs 2000. The said Munyi used to accuse him of lateness and absence. It was his evidence that he refused to sign for the warning letters and Mr Munyi kept threatening him that if he did not sign, he would be dismissed he therefore signed for them eventually. It was his evidence that prior to dismissal there was no disciplinary meeting over the accusations against him.

7. In cross-examination he admitted receiving warning letters and signing for them. He further stated that on 15th July, 2014 he was supposed to report to work at 6.00 a.m. but reported at 8.00 a.m. He decided on the material day to walk to work as there were no vehicles. He did not inform his supervisor about his lateness to report but he told his colleague with whom they were to interchange. He denied writing the apology letter he denied that he could write.

8. The respondent's witness Mr Daniel Wamarite informed the court that he was the respondents' Chief Operating Officer and had worked for four years. It was his evidence that on 17th July, 2014 they received a complaint from a client that their guard had not reported. A replacement was sent. The claimant later reported around 9.00 a.m. and was asked to report to the head office. He appeared drunk.

9. The claimant was issued with a show cause letter and he responded. It was Mr Wamarite's evidence that the dismissal was issued after the claimant deserted work after being issued with a show cause letter. It was further his evidence that the claimant was paid for the month of July and August and further that he was paid overtime and public holidays as was evidenced in the copies of payslips attached.

10. In cross-examination he stated that he received reports from supervisors and verified them. According to him the supervisors must have interrogated the claimant prior to issuing him with the show cause letter. He however admitted that no minutes had been filed concerning the disciplinary proceedings. He further stated that the claimant was dismissed while on leave. The respondent's second witness Mr Ernest Odhiambo denied that the claimant ever called on him concerning his late reporting.

11. The court has carefully considered the pleadings and supporting documents as well as the oral evidence in court. The court further observed the demeanor of the claimant and became of the view that he was an evasive witness and kept contradicting himself. The courts therefore formed the opinion that the accusations against the claimant were more probably true than not. The respondent therefore had a valid and reasonable grounds to dismiss him. However, in dismissal or termination of employment cases the existence of valid and or reasonable grounds alone is not enough.

12. The employer armed with these valid or reasonable grounds must subject such employee to a disciplinary hearing where he or she is heard in defence to the accusations levelled. The evidence on record as well as oral testimony in court does not show that this took place. The court therefore reached the conclusion that the claimant was unfairly terminated from employment.

13. Concerning claims for overtime, public holiday and leave, the court is persuaded from the documents attached by both the claimant and the respondent that these were paid for or leave taken while the claimant was in employment. These heads of claims are disallowed.

14. The court therefore awards the claimant as follows:

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| a. One months salary in lieu of notice | 11,248 |
| b. Four months salary as compensation for unfair termination | <u>44,992</u> |
| | <u>56,240</u> |
| c. Costs of the suit. | |

15. It is so ordered.

Dated at Nairobi this 3rd day of March, 2017

Abuodha J. N.

Judge

Delivered this 3rd day of March, 2017

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge