



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 64 OF 2013

JELIC

MUNYASYA.....CLAIMANT

VERSUS

**BRINKS SECURITY SERVICES LIMITED.....
RESPONDENT**

JUDGMENT

Introduction

1. By an amended Memorandum of Claim filed in Court on 23rd October 2013, the Claimant has sued the Respondent for unlawful and unfair termination of employment.

2. The Respondent filed a Response on 25 February 2013 but did not attend the hearing in spite of due service. The Court therefore heard the Claimant *ex parte* on 2nd February 2017. In reaching its judgment however, the Court has taken into account the Respondent’s Response and supporting documents as filed.

The Claimant’s Case

3. The Claimant states that he was employed by the Respondent as a security guard at a monthly salary of Kshs. 9,500 effective 19th March 2010. He worked until 22nd October 2012 when the Respondent notified him that his services were no longer required.

4. It is the Claimant’s case that the termination of his employment was unlawful and unfair. He now claims the following:

- a) One month’s salary in lieu of notice.....Kshs. 9,500
- b) Salary for the month of October 2012.....9,500
- c) Severance pay for 2 years.....9,500
- d) 12 months’ salary in compensation.....114,000
- e) Costs plus interest

The Respondent’s Case

5. In its Response dated 22nd February 2013 and filed in Court on 25th February 2013, the Respondent denies terminating the Claimant's employment and states that the Claimant deserted duty upon being redeployed following a client's complaint about his misconduct.

6. The Respondent further states that the Claimant was paid his salary for October 2012.

Findings and Determination

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

a) Whether the Claimant deserted duty or was unlawfully terminated;

b) Whether the Claimant is entitled to the remedies sought.

Desertion or Unlawful Termination?

8. In its defence to the Claimant's claim, the Respondent states that the Claimant deserted duty upon being redeployed. While desertion of duty is a lawful reason for dismissal of an employee, it must be proved. It is not enough for an employer to simply state that an employee has deserted duty and has therefore sacked himself.

9. To this extent I am persuaded by the holding by my brother **Abuodha J** in *Godfrey Anjere v Unique Suppliers Limited [2015] eKLR* that an employer who relies on desertion as a ground for dismissal must demonstrate the steps taken to notify the employee that their dismissal is being considered on account of their desertion.

10. In the absence of evidence of any effort by the Respondent to reach the Claimant, the Court reached the conclusion that no such effort was made and the defence of desertion was therefore not available to the Respondent. The next logical conclusion is that the Claimant's employment was terminated without valid cause as required under Section 43 of the Employment Act, 2007 and in violation of the procedural fairness requirements established under Section 41 of the Act.

Remedies

11. In light of the foregoing findings I award the Claimant six (6) months' salary in compensation. In arriving at this award I have taken into account the Claimant's length of service and the Respondent's conduct in the termination process. I also award the Claimant one (1) month's salary in lieu of notice.

12. In his testimony before the Court the Claimant admitted having received his salary for October 2012. This claim is therefore without basis and is dismissed. With regard to the claim for severance pay, the Court did not find any evidence that the Claimant's employment was terminated on account of redundancy. This claim must therefore also fail.

13. Ultimately I enter judgment in favour of the Claimant as follows:

a) 6 months' salary in compensation.....Kshs. 57,000

b) 1 month's salary in lieu of notice..... 9,500

Total.....66,500

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 the case.

16. It is so ordered.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI

THIS 16TH DAY OF JUNE 2017

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JUDGE

Appearance:

Mr. Musyoki for the Claimant

No appearance for the Respondent