



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

MOMBASA

CAUSE NO. 89 OF 2016

HUMPHREY BAKHUYA MARAMBACLAIMANT

VERSUS

SENTINEL SECURITY SERVICES LTDRESPONDENT

J U D G M E N T

1. This is a claim for terminal dues plus compensation for unfair termination of the claimant's contract of employment by the respondent on 18th December 2015. The respondent has denied that the claimant was her employee and that she unfairly terminated his employment. The suit was heard on 28/11/2016 when the claimant testified as Cw1 and the respondent called Mr. Fredrick John Ogolla Ralenya as Rw1. Thereafter both parties filed written submissions.

CLAIMANT'S CASE

2. CW1 stated that he was employed by the respondent as a Security Guard in March 2015 under an oral contract. He was recruited by Mr. Gasper who was the Operations Manager and the Director Mr. Edwin Omondi. His salary was ksh.8000 per month and he was assigned diverse stations to guard until 30/11/2015 when he was involved in a road traffic accident while going home from work. The doctor who attended him recommended for 14 days sick off and CW1 notified Mr. George Onyango who was the respondent Employment and Deployment Officer.

3. When the 14 days sick off lapsed, CW1 reported back to work but Mr. George Onyango, after consulting with Mr. Gasper told him to go back home until he was called back. CW1 was never called back and after waiting for 4 days, he went back to the office but on arrival he was told that he had been dismissed and he was ordered to return his uniform. He was then paid ksh.7527 only and thereafter brought this suit praying for salary in lieu of notice, overtime and public holidays worked, house allowance plus certificate of service.

4. CW1 maintained that he was employed by the respondent and named Denis, Benson, Major Mbithi and Julius his supervisor as some of his fellow employees at the respondent company. He also named Mr. Gasper Barasa Oduor and RW1 as the Operations Manager and the Cashier respectively.

5. On cross examination, CW1 contended that he worked continuously from March 2015 until 30/11/2015 and denied the allegation that he was called to work only on need basis. He maintained that he sought the sick off by phone and it was granted. He however admitted that his salary was inclusive of house allowance.

DEFENCE CASE

6. RW1 is the respondent's General Manager since 2011. He denied knowledge of the claimant and contended that he did not feature anywhere in the respondent company. On cross examination, RW1 admitted that he did not deal with the Security guards on day to day basis. He clarified that the person who did that was Mr. Geroge Onyango and the supervisor as the manager on the ground. He confirmed that Mr. Gasper Barasa was the respondent's Operations Manager. On being shown NSSF statements from the claimant, RW1 admitted that CW1 was indeed employed by the respondent from April 2015 to November 2015. He however denied that the claimant was dismissed unfairly.

ANALYSIS AND DETERMINATION

7. The issues for determination herein are:

- a. Whether the claimant was employed by the respondent from March 2015 to 18th December 2015.
- b. If (a) is confirmed, whether the employment contract was unfairly terminated by the respondent on 18/12/2015.
- c. Whether the claimant is entitled to the reliefs sought.

Employment Relationship

8. No written contract was produced herein but the claimant has given consistent testimony of the person who recruited him to service and has also named the various stations he was assigned to guard by his supervisor. He has further named some of his fellow guards he was working with. Finally he has named the various managers of the respondent and the defence witnesses never contested the said details. In fact RW1 confirmed that the said managers were indeed managers of the respondent.

9. In addition to the foregoing evidence the claimant produced NSSF statements which reflected the respondent as his employer from April 2015 to November 2015 and which RW1 admitted. Consequently, I find that the claimant has proved on a balance of probability that he was employed by the respondent under an oral contract from March 2015 to 18th December 2015.

Unfair termination

10. Under Section 45(2) of the Employment Act, termination of employment by the employer is unfair if the employer fails to prove that it was founded on a valid and fair reason and that it was done after following a fair procedure. In this case the employer adduced no evidence towards discharging the said burden of proof.

11. The claimant has however discharged his burden of proving that he was unfairly dismissed as required under Section 47(5) of the Act. He was dismissed for no valid reason and without being given a chance to defend himself. Consequently, I find and hold that the termination of the claimant's employment for no valid reason and without following a fair procedure was unfair within the meaning of section 45(2) of the Act.

Reliefs

12. Under Section 49 of the Act, I award the claimant ksh.8000 being one month salary in lieu of notice plus ksh.24000 being 3 months salary as compensation for unfair termination. In making the award, I have considered the fact that he had served the respondent for a fairly short term of less than one year, and that he committed no misconduct that contributed to the termination.

13. I also award him annual leave for 8 months on pro rata basis at the rate of 1.75 days per complete month of service equaling to 14 days.

Ksh. $8000 \times 14/26 = \text{ksh.}4307.70$

14. The claim for overtime is dismissed for lack of particulars and evidence to prove that he indeed worked 4 hours overtime per day. Finally the claim for house allowance is dismissed because the claimant admitted on oath that his salary was inclusive of house allowance.

DISPOSITION

15. For the reason that the dismissal of the claimant was unfair, I enter judgment for him in the sum of ksh.36307.70 plus costs and interest.

Dated, signed and delivered this 9th June 2017

O N. Makau

Judge