



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE NO. 396 OF 2015

(Before Hon. Lady Justice Maureen Onyango)

JACKSON AMONDI ANYANGO 1ST CLAIMANT

DENNIS AMADIVA 2ND CLAIMANT

-Versus-

G4S SECURITY SERVICES LIMITEDRESPONDENT

J U D G E M E N T

The two Claimants herein were employed by the Respondent as security guards. Jackson was employed on 1st April 2011 while Dennis was employed on 1st April 2014. Both of them allege that they were unfairly dismissed from employment on 30th September, 2015 on grounds that they received a bribe and that they failed to adhere to the standard operating requirements of their assignment leading to customer complaint. The claim originally filed by the Claimants in person on 6th November 2015 was amended on 2nd June 2016 by Mwakio Kirwa & Co. Advocates. In the Amended Claim they pray for remedies as follows-

Mr. Jackson Omondi

a) Leave 2011

7,846 + 1,600H/A Kshs. 9,446/-

Leave 2012

8,873 + 1,600H/A Kshs. 10,473/-

Leave 2013

10,116 + 1,600H/A Kshs. 11,716/-

Leave 2014

10,116 + 1,600H/A Kshs. 11,716/-

Leave 2015

11,330 + 1,600H/A Kshs. 12,930/-

Leave travelling = 1200×4 Kshs. 4,800/-

b) Overtime

2011

Basic $\underline{7,269 \times 4 \times 26 \times 12}$ Kshs. 40,318/-

225

2012

Basic $\underline{8,873 \times 4 \times 26 \times 12}$ Kshs. 49,215.57/-

225

2013

Basic $\underline{10,116 \times 4 \times 26 \times 12}$ Kshs. 56,110.08/-

225

2014

Basic $\underline{10,116 \times 4 \times 26 \times 12}$ Kshs. 56,110.08/-

225

2015

Basic $\underline{11,330 \times 4 \times 26 \times 12}$ Kshs. 62,843.73/-

225

c) Public Holidays

2011

11 public holidays per year x rate per day 378×2 Kshs, 8,316/-

2012

11 public holidays per year x rate per day 428×2 Kshs. 9,416/-

2013

11 public holidays per year x rate per day 487×2 Kshs. 10,714/-

2014

11 public holidays per year x rate per day 487×2 Kshs 10,714/-

2015

8 public holidays per year x rate per day 520×2 Kshs. 8,320/-

TOTAL

KSHS.373,159/-

a) One month salary in lieu of notice

(Pursuant to section 35(c) of the Employment Act)

Basic salary + house allowance

15,980 + 2,397

Kshs.18,377/-

b) Leave dues for the year worked

(Pursuant to section 28(1) of the Employment Act

And order 10(1) of legal notice No.24/1998)

One month salary x years worked

18,377 x 4

Kshs.73,508/-

c) Unpaid House Allowance

(Pursuant to section 31(c) of the Employment Act

And order 5 of legal notice No.24/1998)

15% x basic salary x total months worked

15% x 15980 x 55 months

Kshs.131,835/-

d) Wages of October 2015

One month salary

Kshs.18,377/-

e) Unpaid Public Holidays

(Pursuant to Order 9(1) of legal notice No.24/1998)

10 days per year x total holidays worked x basic salary

Divided by 26 days x 12

46 Holidays x 15,980

26

28272.31 x 2

Kshs.56,544.6/-

f) Compensation for unfair termination

Gross pay x 12 months

18377 x 12

Kshs.220,524/-

g) Overtime pay

(Pursuant to order 6 of legal notice No.24/1998)

45 hrs per week

Worked from 6am - 6 pm

Overtime hours per week

12 hours x 6 days =72 hrs -52 hrs = 20 hrs

Overtime hrs per month

20 hours x 4 weeks = 80 hrs O.T per month

Therefore overtime for 55 months

80 x 55 = 4400 hours

Worked 4400 O.T hrs for entire period

Hourly Rate =(18377 ÷ 26)8

=88.35/- x 1.5 = 132.5 x 4400

Kshs.583,116/-

h) Leave travel allowance

(Pursuant to order 13 of legal notice No.24/1998)

850 x 4 (years)

Kshs.583,116/-

i) Leave Pro rata (year 2015)

(Pursuant to order 10(2) of legal notice No.24/1998)

7(months) x 3 (days) = 21 days

Daily Rate =18377 = 706.81

26

706.81 x 21 days

Kshs.14,842.96/-

TOTAL CLAIMS

Kshs.1,120,524.91

Mr. Dennis Amadiva

a) **Leave 2014**

10116 + 1,600HA

Kshs. 11,716/-

Leave 2015

11,330 + 1,600HA Kshs. 12,930/-

b) 2014

Basic $\frac{10,116 \times 4 \times 26 \times 12}{225}$ Kshs. 56,110.08/-

2015

Basic $\frac{10,330 \times 4 \times 26 \times 12}{225}$ Kshs. 62,843.73/-

c) 2014

11 public holidays per year x rate per day 487 x 2 Kshs. 10,714/-

2015

8 public holidays per year x rate per day 520 x 2 Kshs. 8,320/-

TOTAL KSHS.165.034/-

a) One month salary in lieu of notice

(Pursuant to section 35(c) of the Employment Act)

Basic salary + house allowance

15,980 + 2,397 Kshs.18,377/-

b) Unpaid house allowance

(Pursuant to section 31(c) of the Employment Act

And order 5 of legal notice No.24/1998)

15% x basic salary x total months worked

15% x 15980 x 17 months Kshs.40,749/-

c) Annual leave allowance

(Pursuant to section 28(1) of the Employment Act

And order 10(1) of legal notice No.24/1998)

One month salary x years worked

18377 x 1 Kshs.18,377/-

d) Compensation for unfair termination

Gross pay x 12 months

18377 x 12

Kshs.220,524/-

e) Unpaid public holidays

(Pursuant to order 9(1) of legal notice No.24/1998)

11 days per year x years worked x basic salary

Divided by 30 x 12

11 x 1 x 1590 ÷ 30 x 12

Kshs.70,312/-

f) Service Pay

15 days x 1 year x 15980 ÷ 30

Kshs.7,990/-

g) Premature breach of contract

7 months remaining

One month's Salary x 7 months

18377 x 7

Kshs.128,639/-

h) Overtime Pay

(Pursuant to section 28 (1) of the Employment Act

And order 10(1) of legal notice No.24/1998)

45 hrs per week

12 hrs x 6 days = 72hrs - 45 hrs = 27 O.T. hrs per week

27 hrs x 4 weeks = 108 O.T hrs for entire period

Kshs.Per hour = 15980 divided by

(24 days x 8 hrs per day) =Kshs.83,229

Kshs.83.229 for one overtime hour

Worked 1836 overtime hours

Therefore total overtime pay = (total hours worked

x payment per overtime) = 1836 hrs x 83.229

Kshs.152,808.44/-

TOTAL CLAIMS

Kshs.1,120,524.91

The Respondent filed a Memorandum of Response on 11th July 2016 in which it admits employing the Claimants but denies that their dismissal from employment was unfair or unlawful.

Claimants' case

The 1st Claimant hereinafter referred to as Jackson testified that he was employed by the Respondent on

1st April 2011 as a security guard. He was dismissed from service on 30th September 2015. The grounds for dismissal were that he took a bribe to allow a lorry with substandard wheat to enter into the premises which he was guarding at Unga Limited, Eldoret. Jackson testified that the job of ascertaining quality was not part of his work. He was guarding at Gate 3. He denied that he was bribed to allow substandard wheat into Unga Limited premises.

Jackson testified that he was called for a disciplinary hearing on 22nd September 2015 but no hearing took place. He testified that when he reached the venue of the hearing he found the Operations Manager, the Human Resource Manager, the Alarms Manager and Mr. Barasa, a union representative. He was not represented at the hearing. He did not call Mr. Barasa or any other person present at the hearing. At the meeting they were harassed and called thieves. They were accused of taking bribes. They were insulted and not allowed to speak even when Mr. Barasa tried to intervene.

Jackson further testified that he was not given the disciplinary notice. It was given to him to sign and it was retained in the Respondent's office on 16th September, 2015. He stated that they did not understand the offences which they were charged with. He denied writing or signing the statement attributed to him in the Respondents bundle at page 9 and 10.

Jackson denied receiving Kshs. 3600 on behalf of the Standard Assurance Officer at Unga Limited. He further denied the contents of the statement filed by the Respondent as his statement. Jackson further testified that he did not deal with any farmer as his task was only to control vehicles at the gate.

Under cross examination Jackson stated that on 16th September 2015 the Operations Manager sent the Alarm Response vehicle to pick him and the 2nd Claimant from their work station at Unga Limited, Eldoret. They were informed that they were suspended because of taking a bribe from a farmer. When he tried to defend himself he was told he will defend himself at the hearing. He did not know the farmer he was accused of taking a bribe from as they did not deal with farmers directly but only with vehicles. He stated that the Kshs. 600 he was found with was given to him by a loader to keep for him in the guard box and was not found on him.

The 2nd Claimant Dennis Amadiva testified that he was employed by the Respondent on 1st April 2014 as a security officer. He was stationed at weigh bridge 1 at the gate of the premises of Unga Limited. His duty was manning the gate, directing staff and visitors, and general security.

The Claimant prayed for judgment as set out in his claim. He stated that he worked from 6am to 6 pm daily and did not take annual leave for the four and a half years that he worked for the Respondent. He further stated that he was not issued with a certificate of service. His first salary was kshs. 529 per day and the last salary from 1st may 2015 was Kshs. 581 per day. He was dismissed on 30th September 2015 on allegations that he received a bribe from a farmer. He testified that he was not told the name of the farmer.

Dennis testified that on 15th September 2015 the Operations Manager told him he had been suspended and should report to the office daily until the date of hearing. He learnt of the date of hearing from the control room on the day before the hearing as he did not receive the notice of the hearing. He denied receiving a bribe of Kshs. 3600 from a farmer. He stated that he did not deal with standard of wheat.

Dennis testified that he was not informed of his right to call a representative to the hearing and did not have enough time to prepare for the hearing. That at the hearing he was not allowed to speak as the panel kept interjecting. He testified that the farmer whom he was alleged to have taken the bribe from was not present and there was also no one from Unga Limited. He testified that there was no complaint from Unga Limited. He testified he did not know lorry registration No. KYT 534 or the owner of the lorry.

Dennis testified that he worked from 6am to 6pm everyday with one rest day every week and was not paid overtime. He worked on public holidays except the ones coinciding with his off days. He prayed for judgment as prayed in the Claim.

Under cross examination Dennis stated that he did not record a statement. He stated that the signature on the statement was also not his as his signature starts with a 'D' and ends with an 'A' unlike the signature on the statement. He stated he did not receive the suspension letter and was informed about the suspension verbally by Mr. Alfred Kazi the Operations Manager. He was informed of the disciplinary hearing date by the control room on 21st September 2015 as he was reporting to work every day while on suspension.

Respondent's Case

Mr. Alfred Kazi who testified on behalf of the Respondent informed the court that he was the Operations Manager for the Respondent in Eldoret at the time material to this suit and knows both Jackson and Dennis who were security officers in his zone at Unga Limited. Their work entailed access control which involves checking and allowing staff and customers and they worked at weighbridge where they controlled vehicles buying maize and wheat. Mr. kazi testified that on 14th September 2015 he received a call from his supervisor in charge of Unga, Dickson Ogweno who reported that he had received a complaint from Unga. Mr. Kazi invited him to go to the office to state what the complaint was. At the office Dickson reported that he had received a complaint that Dennis had received kshs. 3600 at the gate to corrupt the system.

Mr. Kazi called for Dennis after getting a replacement for him. Dennis informed him that he had received Kshs, 3000. He was asked where Kshs. 600 was and Dennis informed him he had given it to Jackson. He then sent the alarms team to fetch Jackson. He testified that the money was meant to be taken to the Quality Assurance Supervisor at Unga so that she could allow in a vehicle which was in the queue. The person who gave the money suspected that his wheat was not good.

Mr. Kazi testified that he questioned the Claimants and Dennis stated that the money was meant for the Quality Assurance Officer but he had not yet delivered the money to her. He recorded their statements and they signed. He referred to the statements at page 8 of the Memorandum of Response. He testified that the supervisor at Unga also recorded a statement at page 9 to 10 of the Memorandum of Response. He testified that after taking their statements he informed the Claimants that due to the seriousness of the allegations he would suspend them until the matter is cleared and issued letters of suspension to both of them which they acknowledged receipt of. He testified that he also issued copies of notification of hearing which they read. The notification states they can bring a witness or representative. He testified that the notification was in duplicate and they retained copies.

Mr. Kazi testified that he carried out investigations and his findings were that Dennis received some cash intended to be given to Quality Assurance Manager but he did not hand over the money. He gave Kshs. 600 to Jackson and remained with Kshs. 3000 and that he intended to keep the money. He testified that by the time he called Dennis the money had been taken by Benedette, the Quality Assurance Manager. That when the farmer reached quality assurance he talked to the Quality Assurance Manager who informed him that she had not received the money. That Dennis informed him Kshs. 3000 was for Quality Assurance Manager and Kshs. 600 was for loaders but he was busy at the gate and did not hand over the money. That Dennis gave Kshs. 600 to Jackson which Jackson produced when he was called by Dennis.

Mr. Kazi testified that when Benedette received the money she called the Respondent's supervisor for Unga Ltd who called him and told him what had transpired. He testified that after investigations he prepared a report. Mr. Kazi testified that his boss considered this matter serious because it concerned a major customer.

Mr. Kazi testified that at the hearing the Claimants were represented by the shosteward Mr. Barasa. That both Dennis and Barasa were given an opportunity to defend themselves. That the disciplinary committee considered the offences as touching on integrity and that the claimants could no longer be trusted. The committee recommended termination of the employment of Claimants.

Mr. Kazi testified that the Claimants were casuals paid on a daily basis at the rate of Kshs. 592 per day inclusive of house allowance. That they were contributors to NSSF and were not entitled to the prayers sought in the Claim.

Under cross examination Mr. Kazi stated that the complaint from Unga Ltd was that there was poor customer service by the Respondent. He stated that he did not have a copy of the complaint which was in writing. He stated that the job description of the Claimants did not include ascertaining quality of products and does not go beyond security. He stated that the name of the farmer was David Rotich but was not stated in the letter of suspension as that was against Company ethics. He stated that the statements were not written by the Claimants. He wrote the statements then the Claimants signed in his presence and he witnessed the signatures. He stated that the Claimants were invited for hearing and Human Resource Officer Jacqueline Onyango took minutes of the disciplinary hearing. The hearing was to take place on 22nd according to the invitation but was postponed to 24th September 2015 since the Delivery Manager who was to be part of the panel was not available. The Claimants who were reporting daily were informed of the change of date.

He stated that he did not witness the receipt of Kshs. 3600 nor did the supervisor, but got information from the supervisor, Benedette, Dennis of Unga, none of whom witnessed the receipt of the money and the two Claimants.

Determination

I have carefully considered the pleadings, evidence and written submissions filed by the parties. The issues arising for determination are the following:

1. Whether there was valid reason for termination of Claimants' employment;
2. Whether there was procedural fairness in the process leading to termination;
3. Whether the Claimants are entitled to the prayers sought.

Reasons for Termination

Section 43 of the Employment Act provides that an employer must prove the reasons for which it intends to terminate the employment of an employee and that the reasons must be valid.

In the present case the Claimants were terminated for reasons that while assigned duties at Unga Limited on 14th September 2015 they:

· received a bribe from a supplier for Unga to allow a lorry KYT 534 with substandard wheat into the premises of Unga Limited, an act which is against the law, G4S Core values.

· failed to adhere to the standard operating requirements of the assignment, leading to customer complain (sic)

Your above actions amount to gross misconduct hence you are hereby dismissed from company service with effect from the date of this letter as per Employment Act 2007.

The letter of suspension gave reasons for suspension as follows:

On 14.9.2015 while assigned at Unga Limited, solicited for cash from a farmer with intent to manipulate procedures at Unga Limited. This amounts to dishonesty in the course of duty. If you are found guilty, you will be liable to dismissal.

According to the evidence in the statements of the Claimants Jackson and Dennis and that of Dickson Ogweno Oindo, a customer gave Dennis Kshs. 3600 to deliver to Benedette the Quality Assurance Officer of Unga Limited which according to Dennis he did not deliver in time as he was busy with records at the gate and the customer's lorry reached the weighbridge before Benedette received the money. Dennis was immediately called by Benedette. She demanded that he hands over the money which he did. Benedette then reported the matter to her supervisor Dennis Chawana who reported to G4S office.

According to the statement of Jackson he was given Kshs. 600 by a loader to keep for him as his overall did not have secure pockets. He was called by Dennis while he was with the loader and Benedette and he handed over the money to Benedette.

The minutes of the disciplinary hearing state that Dennis admitted that he was approached by a farmer to give the grader the money; that he did not forward the money immediately as he was alone at his post and could not leave the post unmanned; that he did not think this was a serious offence hence the reason why he did not inform management or his supervisor about the incident.

The minutes state that Jackson confirmed he was given kshs 600 by a loader whose overall did not have pockets. The loader requested him to keep the money till his shift ended. He kept the money until he was summoned by the grader who was with both the farmer and Dennis and he handed over the money to the grader. That he did not see the need to report the incident as in his opinion it was not serious.

The charges that were contained in both the letters of suspension and dismissal issued to the Claimants did not contain valid reasons as reflected in both the statements by the Claimants and Dickson or in the minutes of the hearing. The Claimants did not solicit for money or receive a bribe according to the statements and the minutes of the disciplinary hearing. Dennis received money to deliver to Benedette while according to the evidence Jackson only received money from a loader for safekeeping.

Section 43 of the Act provides that

43. Proof of reason for termination

(1) In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.

(2) The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.

The reasons for both suspension and dismissal of the Claimants are therefore not valid. Although the Respondents had clear facts of what transpired they decided to charge and dismiss the Claimants for reasons that were different from the facts in their possession.

Procedure

Section 41 provides for procedure before termination as follows:

41. Notification and hearing before termination on grounds of misconduct

(1) Subject to section 42(1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.

(2) Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1), make.

In the case of ***Alphonse Machanga Mwachanya Vs Operation 680 Limited [2013] eKLR***, Radido J summarised the legal fairness requirements set out in Section 41 of the Employment Act, 2007 as follows:

- a) That the employer has explained to the employee in a language the employee understands the reasons why termination is being considered;
- b) That the employer has allowed a representative of the employee being either a fellow employee or a shop floor representative to be present during the explanation;
- c) That the employer has heard and considered any explanations by the employee or their representative;
- d) Where the employer has more than 50 employees, it has complied with its own internal disciplinary procedural rules.

In this case the Claimants have denied that the reasons for disciplinary action being taken against them was explained to them in the presence of a union representative or at all. They state that the Respondent invited Mr. Barasa, a shop steward to the meeting but the Claimants did not talk to Mr. Barasa either before or during the meeting and therefore Mr. Barasa was not a union representative of their choice as provided in section 41. The Claimants also testified that when Mr. Barasa tried to defend them the disciplinary panel did not allow him to say anything and instead insulted him. The Claimants testified that they were not allowed to defend themselves.

The Respondent did not controvert the allegations by the Claimants. The minutes of the disciplinary meeting does not reflect the proceedings but is a summary of what transpired. The attendance list reflects that in attendance was Collins Alego, a shop steward and Mr. Barasa as employee representative yet the minutes do not reflect the role each of them played at the meeting.

The Respondents failed to procure a statement from any of the persons at Unga Limited named to prove the allegations against the Claimants which are based on hearsay. The Quality Assurance Officer who is alleged to have reported the incident does not appear to have recorded a statement. The Respondent did not even prove that there was a complaint from Unga Limited warranting any action to be taken against the Claimants. As was stated in the case of **Nicholus Muasya Kyulaya v Farmchem Limited [2012]** *"It is not sufficient for the employer to make allegations of misconduct against the employee. The employer is required to have internal systems and processes of undertaking administrative investigations and verifying the occurrence of the misconduct before a decision to terminate is arrived at."*

In this case there were no proper investigations, the Respondent merely relying on statements that are inconclusive and hearsay to dismiss the Claimants yet it had the relevant witnesses at its disposal.

Section 45 of the Employment Act provides for unfair termination as follows:

45. Unfair termination

(1) No employer shall terminate the employment of an employee unfairly.

(2) A termination of employment by an employer is unfair if the employer fails to prove—

(a) that the reason for the termination is valid;

(b) that the reason for the termination is a fair reason—

(i) related to the employee's conduct, capacity or compatibility; or

(ii) based on the operational requirements of the employer; and

(c) that the employment was terminated in accordance with fair procedure.

(3) An employee who has been continuously employed by his employer for a period not less than

thirteen months immediately before the date of termination shall have the right to complain that he has been unfairly terminated.

(4) A termination of employment shall be unfair for the purposes of this Part where—

(a) the termination is for one of the reasons specified in section 46; or

(b) it is found out that in all the circumstances of the case, the employer did not act in accordance with justice and equity in terminating the employment of the employee.

(5) In deciding whether it was just and equitable for an employer to terminate the employment of an employee, for the purposes of this section, a labour officer, or the Industrial Court shall consider—

(a) the procedure adopted by the employer in reaching the decision to dismiss the employee, the communication of that decision to the employee and the handling of any appeal against the decision;

(b) the conduct and capability of the employee up to the date of termination;

(c) the extent to which the employer has complied with any statutory requirements connected with the termination, including the issuing of a certificate under section 51 and the procedural requirements set out in section 41;

(d) the previous practice of the employer in dealing with the type of circumstances which led to the termination; and

(e) the existence of any previous warning letters issued to the employee.

The Respondents having failed the test of both valid reason and fair procedure, the termination of employment of the Claimants was unfair and I find and hold accordingly.

Remedies

The Claimants prayed for notice, house allowance, unpaid public holidays, overtime, leave and leave travel allowance, wages for October, 2015 and compensation.

The Claimants having been unfairly terminated are entitled to salary in lieu of notice of one month. The Respondent did not adduce any evidence to prove that the claimants were paid for work performed on public holidays, or that they were paid overtime, or that they took annual leave and were paid leave traveling allowance or paid in lieu thereof. There was further no evidence adduced by the Respondent to prove that the Claimants were paid salary for the last month worked which is not October, 2015 but rather September, 2015 as stated by Claimants in their testimony in court. Under section 10(3)(a)(i) of the Employment Act the employer is required to keep the following records:

10. Employment Particulars

(3) The statement required under this section shall also contain particulars, as at a specified date not more than seven days before the statement, or the installment containing them, is given of—

(a) any terms and conditions relating to any of the following—

(i) entitlement to annual leave, including public holidays, and holiday pay (the particulars given being sufficient to enable the employee's entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated);

The section is very specific about the nature of records the employer is required to keep. Such records should be **sufficient to enable the employee's entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated.**

Section 10(6) and (7) provide as follows with respect to the failure of the employer to supply the records:

(6) The employer shall keep the written particulars prescribed in subsection (1) for a period of five years after the termination of employment.

(7) If in any legal proceedings an employer fails to produce a written contract or the written particulars prescribed in subsection (1) the burden of proving or disproving an alleged term of employment stipulated in the contract shall be on the employer.

It is thus the responsibility of the employer to produce records and the Respondent cannot escape liability by asserting as has been done herein, that the Claimants failed to produce records of their claims.

For the foregoing reasons I award each of the Claimants the following:

JACKSON OMONDI ANYANGO

1. Notice

I award Jackson 1 months' gross pay in lieu of notice in the sum of Kshs. 16,030.

2. Annual Leave

The Claimant started working in April 2011. According to the Regulation of Wages (Protective Security Services) Order (hereinafter referred to as the **Order**) the Claimant is entitled to 26 working days leave for every year worked or prorata leave of 3 days per month for any period less than 12 months. Having worked from April 2011 to September 2015 Jackson is entitled to 122 days annual leave. He is therefore entitled to Kshs. 64985.50 which I award him.

3. Overtime

The Respondent having not denied that the Claimants worked 12 hours per day for 6 days every week, the Claimants were entitled to overtime worked in excess of 52 hours per week as provided in Rule 6 as read with rule 7 of the Order. Having worked 72 hours per week Jackson is entitled to 20 hours per week of overtime. Overtime is a continuing wrong that should have been claimed within 12 months. For this reason I will award overtime for 12 months only being 20hours per week for 52 weeks paid at one-and-a-half (1.5) times the normal hourly rate of pay. I award him Kshs. 110794.70.

3. Public Holidays

The Claimants testified that they worked on all public holidays except those which fell on their rest day. There are 11 public holidays a year. The Respondent did not adduce any evidence to prove either that the claimants were paid overtime for work done on public holidays or that they did not work on public holidays. Work done on Public Holidays are payable at double the normal hourly rate of pay. The Claimant is therefore entitled to (1/225x15980x12x11x2). I award him Kshs. 18,750.

4. Compensation

Having found that Jackson was unfairly dismissed and taking into account all relevant circumstance of the case, it is my opinion that compensation equivalent to 5 months gross salary is reasonable. I award him Kshs. 16030x5 being 192,360.

5. Salary for September 2015

Jackson is in addition entitled to gross salary for September 2015 in the sum of Kshs. 116030.

DENNIS AMADIVA

1. Annual Leave

Dennis worked for 1 year 6 months and is entitled to annual leave of 44 days. Based on his last basic pay of Kshs. 15390 he is entitled to Kshs. 22572 which I award him.

2. Overtime

Having worked 72 hours per week like Jackson, Dennis is entitled to overtime of 20 hours per week. I award him overtime for 12 months being 20hours per week for 52 weeks paid at one-and-a-half (1.5) times the normal hourly rate of pay. Using the formular at rule 7 of the Order the amount is $(1/225 \times 15390 \times 1.5 \times 20 \times 52)$ Kshs. 106,704. I award him the said sum.

3. Public Holidays

Dennis is entitled to overtime for work done on public holidays for 12 months as follows $(1/225 \times 15390 \times 12 \times 11 \times 2)$. I award him kshs. 18,057.60 for overtime worked on Public Holidays.

4. Compensation

Having worked for only one and a half years it is my opinion that compensation equivalent to 2 months salary is reasonable and I award Dennis Kshs. 30,780.

5. Salary for September 2015

Dennis is in addition entitled to gross salary for September 2015 in the sum of Kshs. 15,440.

Orders accordingly.

Dated and signed and delivered this 8th day of June, 2017

MAUREEN ONYANGO

JUDGE