



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI**

**CAUSE NO. 3 OF 2017**

**GEORGE NGUYO MWANGI.....CLAIMANT**

**VERSUS**

**GROUP 4 SECURITY SERVICES (G4S) LIMITED.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday, 14<sup>th</sup> July, 2017)

**JUDGMENT**

The claimant filed the memorandum of claim on 06.01.2017 through Peter M. Muthoni and Company Advocates. The claimant prayed for judgment against the respondent for:

a. Declarations that his claim is valid and that the termination was unlawful, 12 months' gross salary Kshs.437, 308.00; 3 months' pay in lieu of termination notice Kshs.106, 827.00; payment for 10 years served Kshs. 356, 609.00; making a sum of Kshs. 900,526.00; and general damages for distress (mental agony and anguish) plus interest.

b. Costs of the suit.

The claimant was employed by the respondent effective 01.01.2007. The claimant was employed as a driver and as at termination he earned Kshs. 35, 609.00 per month.

The claimant was terminated by the letter dated 24.10.2016 on account of medical reasons. It stated that reports by medical practitioners had confirmed that the claimant could not continue in employment by reason of his medical status. The letter filed and issued by the claimant by Dr. Francis Maina advised that the claimant needed to work in a station or position that could afford him good control of his blood sugar as well as reducing any danger to him-self in event of the hypoglycaemic episodes or attacks. It was stated by the doctor that the condition was lifelong ailment only managed on insulin which tended to reduce the claimant's blood sugars depending on a lot of other factors.

In the termination letter, the respondent stated that the management extended an offer of employment under new terms of service to a non- driving role.

The claimant has not provided any information about his position in view of the offer of employment in a non-driving position.

Despite service, the respondent did not enter appearance and did not take part in the steps in the suit including the hearing.

The only issue for determination is whether the claimant is entitled to the remedies as prayed for. The

court makes findings as follows:

- a. The respondent did not accord the claimant the notice and the hearing as envisaged in section 41 of the Employment Act, 2007. Thus, the court considers that the respondent did not follow due procedure for termination on account of physical incapacity or ill health. The court returns that the termination was unfair. The court has considered that the claimant failed to consider the alternative job offered by the respondent and that the claimant has since mitigated his circumstances by taking on another driving job. For the unfair termination and under section 49(1) (c), the court considers that 3 months salaries will meet justice in this case plus one month pay in lieu of the termination notice making **Kshs.142,436.00** at Kshs.35, 609.00 per month.
- b. The court finds that there was no evidence to justify the other claims and especially that there was no material before court to show the amount of money paid to the claimant after the termination. Accordingly the other prayers will fail as unjustified.
- c. As no defence was filed costs are awarded to the claimant and fixed at **Kshs.30, 000.00** all inclusive.

In conclusion judgment is hereby entered for the claimant against the respondent for payment of **Kshs.172, 436.00** by 01.09.2017 failing interest to be payable at court rates from the date of the judgment till full payment.

**Signed, dated and delivered** in court at **Nyeri** this **Friday, 14<sup>th</sup> July, 2017**.

**BYRAM ONGAYA**

**JUDGE**