



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 804 OF 2014

JULIUS WANYOIKE MBURUCLAIMANT

VERSUS

NYALA ESTATE LIMITED.....RESPONDENT

JUDGEMENT

1. By a memo of claim dated 12th May, 2014 the claimant averred that he was employed by the respondent as a Security Guard and continuously worked at a salary of Kshs. 7,643 per month. On 2nd February, 2014 he was off duty when he was called by his supervisor Mr Paul Nthiga and asked to report to the Manager Mr J. T. Kamau the following day. When he reported the following day as advised he was told by Mr Kamau that the management had decided to declare him redundant and that he was not to report to work anymore. The claimant further averred that upon termination of his services he was never paid his terminal dues.

2. The respondent refuted the claim via a memorandum of response filed on 11th July, 2014. The respondent averred that the claimant was a casual employee who was occasionally engaged during peak season when coffee was being picked. The respondent denied the claimant was employed as a security guard and that on the material day he was assigned the task of trimming the edge of a fence but declined to do so. The claimant instead walked away and never came back. The respondent therefore averred that the claimant was neither dismissed nor declared redundant.

3. In his oral evidence in court the claimant stated he was employed as a security guard. According to him, he was employed on 11th February, 2011. He used to work from Monday to Saturday and from 6.00 to 6.00 both night and day. He worked until 2nd February, 2014. It was his evidence that he worked uninterrupted but would take day offs to attend to personal matters.

4. Upon his termination he was not given any reasons and when he demanded to be paid his terminal dues he was told there was no money. According to him his salary was paid weekly and that he was not a member of NSSF.

5. The respondent witness Mr. Paul Nthiga Nyaga informed the court the claimant used to work for the respondent as a general worker and at times as security. He was paid weekly. According to him on 2nd February, 2014 he was informed by the manager that there was no more work where the claimant was hence he was to be assigned new duties. According to him he assigned the claimant the duty of trimming the fence but he refused. He left and never came back. He denied there was any redundancy.

6. Mr Nyaga further informed the court that the claimant had no special training as a security guard. Mr Nyaga could not recall if the claimant was registered with NSSF. On being asked by the court, Mr Nyaga

stated that the claimant was a seasonal worker but was known to him since 2011.

7. It is not in dispute that the parties herein separated from the employment relationship on 3rd February, 2014. The claimant avers he was terminated on account of redundancy while the respondent states the claimant left employment on his own after refusing to take up an assignment of trimming the fence.

8. The burden of proof of reasons for termination of employment is by law placed on the employer. If it is untrue as the claimant alleges, that he was declared redundant, and that the truth was that the claimant absconded work after he was reassigned new duties, it was the duty of the respondent to show that effort was made to ask the claimant to return to work at the pain of being dismissed in default. This did not come out clear in pleadings and evidence.

9. The court inevitably reaches a conclusion that the termination of the claimant was unfair in terms of reason and procedure. The court therefore awards the claimant as follows:

	Kshs.
a. One month’s salary in lieu of notice	7,643.00
b. Service pay at the rate of 15 days pay for each complete year of service	11,464.50
c. Six months salary as compensation for	
d. unfair termination of services	<u>45,858.00</u>
	<u>64,965.50</u>
e. Costs of the suit.	

10. It is so ordered.

Dated at Nairobi this 29th day of September, 2017

Abuodha J. N.

Judge

Delivered this 29th day of September, 2017

Abuodha J. N.

Judge

In the presence of :

.....Claimant

.....Respondent