



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI
CAUSE NUMBER 1930 OF 2016
ZACHARIA ONDIEKI MARORO & 40 OTHERS.....CLAIMANTS
VERSUS
LAVINGTON SECURITY LIMITED.....RESPONDENT
RULING

1. In the Notice of Motion dated 20th September, 2016 the claimants sought orders inter alia:
 - a. The court stays or suspends the applicants' dismissal letters dated 6th September, 2016.
 - b. Pending the hearing and the determination of the Motion and or the main claim, the Court prohibits and injuncts the respondent from declaring a vacancy in respect of claimants' employment positions and filling up the same.
 - c. An interim order do issue for the payment of claimants salaries and entitlements.
 - d. The court orders unconditional reinstatement of the claimants and that they be accorded duties with full salaries in the normal manner.
2. The application was supported by the affidavit of Zacharia Ondieki Maroro who deponed among others that:
 - a. I have been employee of Lavington Security since the year 2013 in the position of a Guard.
 - b. My Co-claimants are also employed as guard in the same company
 - c. Our salaries are maximum of Kshs 13,500 and minimum Kshs 10,500/=.
 - d. Our tribulations in the company started when we questioned our salary payments below the statutory minimum wage recommended by the Government
 - e. Unable to argue for our rights we opted to and joined the Kenya National Private Security workers Union who upon recruitment brought Case No. 2045 of 2015 for deduction of union dues and recognition.
 - f. Thereafter the respondent management commenced a calculated scheme of witchhunt and

intimidation of employees and sackings of anybody who had joined the union to frustrate our quest to be unionized to agitate for our rights.

g. The next cause of action the respondents resorted to to frustrate us is in delaying payment of our salaries to frustrate our operations and even get us to be locked out of our rented residences just to ensure that we get out of employment.

h. On the 5th September, 2016 after waiting for salaries with no direction as to when the same shall be paid and under pressure most importantly to get our children to school, schools having opened on the 29th of August, 2016, we went to the respondents' offices to seek and demand for payment of our salaries.

i. Cunningly the respondents' Director and other top managers engaged us in discussions for the better part of the day trying to calm us down and promise various changes including for us to get out of the union, fair wages and allowing no one to freely get into the union.

j. Unknown to us the same management was busy recruiting temporary or reliever guards to take up duties at our work places so much so that by the time we went back to our assignments we found our position taken up.

k. When we reported to the office the next morning we were served with notices to show cause alleging we had absconded duty.

l. We duly responded to their notice to show cause but were not allowed to make copies of responses since we were at the respondents' offices.

m. We rely in this employment and we have served with dedication for a long time and we are still willing to serve. However, without any hearing or due process by the 16th of September, 2016, we were called and served with false dismissal letters among others claiming that we had refused to respond to their letters and to resume duty when in essence it is the respondent who has kept temporary staff on own assignment.

3. The respondent opposed the application and filed a replying affidavit through one Risper Obure who deposed among others that:

a. The contents of paragraph 9 and 10 is denied and the claimants are put to strict proof. The respondent further wishes to state as follows:

i. On 5th September, 2016 at around 5:30 am, the 1st claimant herein together with the 23rd claimant and 31st claimant marshalled approximately 15 guards to assemble at Technical University of Kenya with the sole intent of causing civil disturbance.

ii. The said guards without any permission from the police started demonstrating and still in company uniforms marched past Haile Sellasie Avenue ICDC, University of Nairobi, KEMU, Utalii House, Pension Towers, Uhuru Highway to University of Nairobi to the respondent's office demanding audience from the respondent's Directors.

iii. During the aforesaid unsanctioned protest march, they were flushing out guards and urging them to join the demonstration.

b. Further to the foregoing, the respondent wishes to state that the allegations that the salaries were delayed is unfounded and a ploy to cover up the true intentions of the claimants herein. The respondent normally pays its employees salary on or before the end of each month.

c. That the contents of paragraph 11 and 12 is denied and the claimants are put to strict proof

thereof. Further the Respondent wished to state as follows:

- i. The respondent is in the security industry and clients expect security services. When the claimants left their duty station without handing over the
- ii. Assignment, their actions put the respondent's client at risk and they had to be replaced immediately to secure the claimant's properties.
- iii. The respondent has lost revenue and time through untimely sourcing of guards to replace the claimants herein.
- iv. Due to the unsanctioned absenteeism of the claimants from assignments, the respondent has been forced to compensate its claimants.

4. In support of the application Mr Wathome of the applicants submitted that it was misleading for the respondent to claim that the claimant's participated in an illegal strike. If at all they did, the respondent failed to take requisite steps to notify the claimant's union representative and the area labour officer of the alleged strike. According to counsel upon joining Kenya National Private Security Workers Union, his clients became targets for undue harassment and intimidation.

5. According to Mr Wathome, the action by the respondent amounted to unfair labour practice since under section 5(2) (a) of the Labour Relations Act it was clear that an employer should not victimize an employee desiring to join a Trade Union. Ms Sang for the respondent on her part submitted that the prayers were incapable of being granted at the interlocutory stage due to their finality.

6. According to Ms Sang, the claimants with the exception of 1st claimant, were summarily dismissed for leaving their designated workplace and participating in an illegal strike. The claimants failed to give any explanations why they absented themselves from work nor have they produced any evidence supporting their allegations that they were dismissed due to their union membership.

7. The claimants herein were already dismissed by the time they filed this claim. In the circumstances a reinstatement will rarely be ordered unless in exceptional circumstances. No such circumstances have been demonstrated here. It would seem the cause of the termination of the claimants services was as a result of them marching to the respondent's offices to ask for their salaries which were delayed making them unable to meet their obligations. The respondent does not seem to convincingly refute this fact.

8. Payment of salary earned is the right of any employee. A dismissal on account of asking for payment of salary earned would amount to unfair labour practice. This issue will however be decided upon during the full trial after receiving evidence.

9. The court will therefore not grant the orders sought at the interlocutory stage as they would disincentive the need to proceed to full trial.

10. The application is therefore disallowed and the matter ordered to proceed to full trial on merits.

11. 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