



**REPUBLIC OF KENYA**

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

**CAUSE NO. 100 OF 2015 CONSOLIDATED WITH CAUSE NO. 101 OF 2015**

**ROWLAND GAKUO WANJERU.....1<sup>ST</sup> CLAIMANT**

**AND**

**SHAMTON MACHARIA NJERI.....2<sup>ND</sup> CLAIMANT**

**VERSUS**

**HYDRO KENYA LIMITED.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday, 8<sup>th</sup> December, 2017)

**JUDGMENT**

The claimants filed their respective memoranda of claims on 12.06.2015 through Muchiri Wa Gathoni & Company Advocates. At the time of termination the 1<sup>st</sup> claimant earned Kshs.10, 500.00 and the 2<sup>nd</sup> claimant Kshs. 7, 500.00 per month. The claimants were employed by the respondent as security guards. On the night of 12.10.2014 the claimants were on duty and they were attacked by armed robbers. Consequently the claimants sustained serious injuries. The claimants underwent medical treatment and thereafter, they testified that their supervisor told them not to resume duty. The third night guard also injured during the robbery, one John, was allowed to resume work but the claimants testified that they reported at work after the treatment but they were not allowed to resume duty. The 1<sup>st</sup> claimant reported to resume work after one month of treatment and the 2<sup>nd</sup> claimant after 3 days of treatment.

The claimants filed the present suit claiming unfair termination that was without notice or a valid reason. The 1<sup>st</sup> claimant prayed for pay in lieu of termination notice Kshs. 10, 500.00; pay in lieu of annual leave Kshs. 10, 500.00; severance pay of 15 days for each year served Kshs. 5, 250.00; and 12 months' pay for compensation for unfair termination Kshs. 126, 000.00 making a sum of Kshs. 162, 750.00. The 2<sup>nd</sup> claimant claimed Kshs.7, 500.00 in lieu of annual leave; Kshs. 7, 500.00 pay in lieu of notice; Kshs. 4, 250.00 being severance pay of 15 days for the year of complete service; and 12 months' pay of compensation for unfair termination Kshs. 90, 000.00 making a sum of Kshs. 116, 750.00.

The respondent filed responses to the statements of claims on 31.08.2015 through Wabandi Gacheru & Kariuki Company Advocates. The respondent prayed that the suits be dismissed with costs.

The respondent's case and evidence was that the claimants had failed to report back at work after the robbery and recovery from the injuries sustained by the claimants. RW2 was one John King'ori, one of the guards injured on the material night and who resumed duty as he stated, sooner than February 2015. As per claimants' evidence he testified that on 13.10.2014 the respondent had promised the three guards

that were injured that they would resume duty once they recovered. In his case, he was called to resume duty and he had not been fired from job like the claimants alleged in their cases.

RW1 was Esther Wairimu Muriithi, the respondent's manager at the site where the claimants had been deployed on the material night. She confirmed the attack on the night of 12.10.2014 and the serious injuries the claimants suffered. Further, she stated that the claimants failed to resume work after the treatment. She further testified that John resumed duty in February 2015 and it was after the respondent had received the claimants' demand letter of 17.12.2014.

The court has considered the pleadings, the evidence and the submissions on record. The court returns that the termination of the claimant's employment was unfair for want of a valid reason as envisaged in section 43 of the Employment Act, 2007. While making that finding the court returns that the account by the claimants was credible that they were told that there was no work for them. That is more so because had the claimants absconded duty as was alleged for the respondent, then nothing stopped the respondent from initiating disciplinary process to terminate the claimants on account of absence without leave or permission. In any event, it is clear that the said John was allowed to resume duty only after the claimants issued the demand letter and the resumption decision was clearly an afterthought.

The court has considered the reliefs sought. The court returns that the termination amounted to unfair termination on the grounds of redundancy as envisaged under section 40 of the Employment Act, 2007. There was no material dispute between the parties as to the particulars of the claims and the court returns that the claims are within the provisions of section 40 and 49(1) (c) of the Act. The court returns that the claimants are entitled to the 12 months' compensation as prayed for considering the aggravating factor that after the injuries, the respondent did not meet all medical bills especially after the termination of employment. The court has further considered the pain and suffering flowing from the injuries and further that the claimants desired to continue in employment and they did not contribute to their removal in any manner. They are entitled as prayed for and the court returns that the pay sheets filed for the respondent did not establish that the respondent paid in lieu of annual leave as was submitted for the respondent.

In conclusion, judgment is hereby entered for the claimants against the respondent for:

- 1) The declaration that the termination of the claimants' employment was unfair.
- 2) The respondent to pay the 1<sup>st</sup> claimant Kshs.162, 750.00 and the 2<sup>nd</sup> claimant Kshs.116, 750.00 by 15.01.2018 failing interest at court rates to be payable thereon from the date of the suits till full payment.
- 3) The respondent to pay the claimants' costs of the suit.

**Signed, dated and delivered in court at Nyeri this Friday, 8<sup>th</sup> December, 2017.**

**BYRAM ONGAYA**

**JUDGE**