



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE NO. 242 OF 2014

SOLOMON GAMINWA

CLAIMANT

v

P.G. SECURITY SERVICES LIMITED

RESPONDENT

JUDGMENT

1. Solomon Gaminwa (Claimant) instituted legal proceedings against P.G. Security Services Ltd (Respondent) on 23 June 2014 and he stated the Issue in Dispute as *Unfair Termination*.
2. The Respondent filed a Response on 10 September 2014 and documents and witness statements on 19 January 2015. Other documents were also filed later.
3. The Claimant testified on 22 January 2015. The Respondent's witnesses testified on the same day and on 2 October 2017.
4. The Claimant filed his submissions on 18 October 2017, while the Respondent filed its submissions on 6 November 2017.
5. The Court has considered the pleadings, evidence and submissions and identified the Issues arising for determination as, *whether the Claimant was an employee of the Respondent, whether there was unfair termination of employment, whether the Claimant was underpaid, whether the Claimant worked overtime without pay, whether the Claimant had outstanding leave by time of separation and appropriate remedies*.

Whether Claimant employee of Respondent

6. The Claimant did not produce any formal contract with the Respondent. However, during testimony he stated that he was employed by the Respondent on 30 October 2013 as a security guard.
7. The Respondent produced two contracts dated 30 October 2013 and 1 January 2014 issued to the Claimant by an entity known as *Wimi Care Services*.
8. The Claimant disowned the signatures in the contracts entered into with an entity known as *Wimi Care Services*.
9. The Respondent's first witness, an Office Administrator told the Court that the Respondent had a contract with *Wimi Care Services* for supply of security services and she produced an agreement dated 5 December 2012. According to her, the Claimant was an employee of *Wimi Care Services* and not the Respondent.

10. The witness also stated that the Respondent would pay *Wimi Care Services* for the security services and *Wimi Care Services* would pay the guards directly as the employer.

11. The Respondent's second witness echoed the testimony of the first witness and made reference to records from the *National Social Security Fund* and *National Hospital Insurance Fund* which indicated *Wimi Care Services* as the Claimant's employer to buttress the position that the Respondent was not the Claimant's employer.

12. Despite the Claimant disowning the contracts produced in Court, considering the secondary records from the *National Social Security Fund*, the Court is satisfied that the Respondent was not the employer of the Claimant and therefore it cannot be liable for the claim for unfair termination of employment/breach of contract.

13. The Court has also taken note that a unionist appeared for the Claimant without filing any formal authority or documentation entitling him or the Union to appear as a representative of the Claimant (Claimant had filed the Claim in person).

14. The rules governing representation by a Union are clearly set out. The Union in the present case did not demonstrate it had lawful authority to represent the Claimant.

15. With the conclusion reached on the employment relationship, it would not be necessary for the Court to consider the other identified Issues.

16. The Court in the event dismisses the Memorandum of Claim herein with no order as to costs.

Delivered, dated and signed in Nakuru on this 8th day of December 2017.

Radido Stephen

Judge

Appearances

For Claimant
Security Workers Union

Mr. Peter Odima, Assistant General Secretary, Kenya National Private

For Respondent

Mr. Mbeche instructed by Obura Mbeche & Co. Advocates

Court Assistants

Nixon/Martin