



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS**  
**COURT OF KENYA AT NAIROBI**  
**CAUSE NO. 1943 OF 2013**  
**ASORO MWENJE ASTONE ..... CLAIMANT**  
**VERSUS**  
**RILEY SERVICES LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The suit was filed in the Chief Magistrate's Court at Nairobi vide a plaint dated 24<sup>th</sup> November 2008. The brief facts of the claim are as follows;

The plaintiff was employed by the defendant on 28<sup>th</sup> December 2006 as a security guard earning a salary of Kshs.6,754.05.

The plaintiff worked continuously until the 20<sup>th</sup> May 2008, when his employment was terminated by the defendant.

2. The matter was transferred to this court by Onyancha J. on 20<sup>th</sup> November 2013 pursuant to an application made to the High Court on 14<sup>th</sup> October 2013.

3. The plaintiff set out facts leading to termination of his employment in a witness statement dated 4<sup>th</sup> February 2014. The plaintiff adopted the statement in sworn testimony before court.

4. The plaintiff told the court that on 20<sup>th</sup> May 2008 while stationed at University of Nairobi senior staff's Clinic as a security guard a student with mental illness was brought to the student's sick bay adjacent to the senior staff clinic.

5. The security guard stationed at the student's sick bay requested the plaintiff to help him in handling the sick student under the instructions of Dr. Owito in psychiatrist department.

6. The plaintiff helped take the student into the sick bay accordingly and upon return to his station, he met a director and a training officer of the respondent who demand to know where the plaintiff had gone. The plaintiff explained to them what had happened and requested the two to confirm his story from the student's sick bay. The director dismissed the plaintiff on the spot and sent a replacement guard after one hour. The plaintiff was asked to report to the respondent's office immediately and was asked to hand over his uniform notwithstanding that the plaintiff had no clothes to change into. The plaintiff was

forcefully stripped of the uniform by three guards and in the process, the three guards punched the plaintiff all over the body.

7. The plaintiff pursued his dues for seven (7) days in vain and reported the dispute to the Ministry of Labour. The dispute was not resolved hence the suit.

8. The plaintiff seeks payment of;

(i) salary in lieu of notice in the sum of Kshs.6,754.05;

(ii) leave days in the sum of Kshs.6,754.05;

(iii) overtime, in the sum of Kshs.87,352.38;

(iv) uniform refund in the sum of Kshs.1,530.00;

(v) severance pay at fifteen (15) days salary for each completed year of service in the sum of Kshs.8,104.86; and

(vi) collection charges in the sum of Kshs.11,049.53.

9. The plaintiff did not seek general damages for unlawful dismissal.

### **Defence**

10. The defendant filed a statement of defence dated 25<sup>th</sup> February 2009 on 26<sup>th</sup> February 2009. The defendant admitted the description of the parties as contained in the plaint.

11. The respondent admits that the plaintiff was summarily dismissed but states that the plaintiff was dismissed for gross misconduct after being given a hearing

12. The defendant denies that it owes the plaintiff the special damages set out in the plaint, totaling Kshs.121,544.87 and prays the suit be dismissed with costs.

### **Determination**

13. The only issue for determination is whether the plaintiff is owed the terminal benefits set out in the plaint.

14. The plaintiff produced his payslip for the month of April 2008 which indicates that he earned a monthly basic salary of Kshs.6754.05. The period he served the defendant was not placed in dispute.

15. The defendant was not ready to proceed with the hearing on 19<sup>th</sup> October 2005 and did not give justifiable reason for the court to adjourn the matter that has been pending since the year 2008, a period of about seven years.

16. The matter proceeded *ex parte* in the absence of counsel for the defendant. The respondent had not filed any witness statement and therefore the testimony by the plaintiff and the particulars of claim remain uncontroverted.

17. The court is satisfied that the plaintiff served the defendant from 2006 to 2008 and was summarily dismissed from employment for unjustifiable reasons. That the plaintiff was stripped naked and manhandled by his colleagues under instructions of the director of the defendant. Had the plaintiff sought general damages, the court would have awarded the same.

18. The court is satisfied, in view of the uncontroverted claims that the defendant owed and did not pay

all the claims set out herein before in this judgment amounting to Kshs.121,544.87. The court awards the plaintiff as against the defendant accordingly. The award of Kshs.121,544.00 is payable with interest at court rates from date of filing suit till payment in full.

19. The defendant is to pay the costs of the suit.

**Dated and Delivered at Nairobi this 22<sup>nd</sup> day of January 2016.**

**MATHEWS NDERI NDUMA**

**PRINCIPAL JUDGE**