



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 908 OF 2010

GEORGE MUSAMALI.....CLAIMANT

VERSUS

G4S SECURITY SERVICES KENYA LIMITED.....RESPONDENT

JUDGMENT

1. The claimant avers that he was employed by the respondent on 1st November, 2004 as a Senior instructor at a basic salary of Kshs.52,200 per month together with other benefits. According to him he served with diligence until 1st February, 2010 when he received a letter from the respondent informing him of the termination of his services. He sought to know the reasons for the termination of his services but received none from the respondent.
2. The claimant therefore seeks an order from the Court that the dismissal be declared unprocedural and unlawful and that the respondent pays him his terminal benefits.
3. The respondent on the other hand in its memorandum of response dated 16th September, 2010 averred in the main that the claimant did not discharge his duties diligently as averred. On the contrary, the claimant was involved in dishonest and fraudulent practices by misappropriating payment for guards attending training in March and April, 2009. According to the respondent therefore the claimant's dismissal was warranted and in accordance with the law.
4. Regarding procedure for dismissal the respondent averred that all procedures for summary dismissal were followed and claimant informed of the intended dismissal and grounds thereof. The respondent further averred that upon dismissal, the claimant was paid his terminal dues and executed discharge stating he had no further claim against the respondent. According to the respondent therefore the claimant is not entitled to the reliefs sought hence the claim should be dismissed.
5. In his evidence during the trial the claimant stated that he was dismissed on 1st February, 2010 but the dismissal letter did not give reasons for his dismissal. Its merely quoted a clause in the employment contract. He stated that he contested the dismissal by a letter but never received any response. It was his evidence that he was involved in recruitment of guards and training but was never involved in their payment.
6. According to him payments were done by one Nicodemus Omasinde. He prepared the payment

sheet and forwarded the same to a Mr. Nyandong to pay the guards. However on one of the payment sheets labelled as No. 3 he admitted being named as the paying officer. He denied ever seeing the minutes of the disciplinary hearing and that though Mr. Omosinde is named as one of the attendees, he had left respondent's employment by the time they were purported to have been taken. He further stated the minutes did not give a true reflection of what transpired. It was his evidence that according to the disciplinary procedure, he was supposed to be notified within two days of the intention to dismiss him.

7. In cross-examination he stated that deductions were made from his salary on account of an allowance he was paid but failed to account for. He further informed the court that he had abandoned his claim for unpaid salary for the month of January and claim for salary from date of termination to date of retirement at the age of 60 years. He further stated that the money that was sent to him was paid out to the recruits and they signed for it and he countersigned as witness. Concerning the charges against him, he admitted he was aware of them but wanted them proved. He accepted, attending the meeting of August but was not told in advance it was a disciplinary hearing. He further stated that he was not furnished with documents subject of the charges against him.

8. The respondent called three witnesses. Godfrey Miti the 1st witness testified that he was recruited and trained by the claimant but were never paid anything after the training. He however learnt some of his trainer colleagues were paid. In cross-examination he denied ever seeing the payment sheets and could also not remember Omosinde.

9. Mr. Nyandong' testified as the second witness and stated there was an issue of fraud. According to the witness, the recruits were entitled to bus fare. The claimant used to send list of recruits to him and their identity card numbers and he would process their payments and sent with a rider to Embakasi for payment to recruits. The signed schedule would be returned for accounting purposes. In this particular case he received the schedule back from Embakasi and checked if it was signed by the recipients. Some recruits later complained they were never paid and investigations were conducted. He and the claimant were invited to attend before a disciplinary panel to defend themselves. According to him, he was cleared of any wrongdoing and asked to resume work.

10. In cross-examination he stated that it was the claimant who used to send most lists of recruits and that he had no list where the claimant paid the guards but they never sign, shown appendix 1 he said he never received the same back for accounting.

11. The respondent's 3rd witness Mr. Mutisya testified that he was part of the panel that listened to the claimant's disciplinary case. According to him the claimant was called upon to answer charges of gross misconduct. After the hearing the claimant was found to have misappropriated money meant for newly recruited guards. The panel recommended the termination of his services. According to him the claimant was paid all his dues upon termination of his services.

12. In his closing submissions before the Court, Mr. Musudi for the claimant submitted that the respondent ought to have communicated the decision to terminate the claimant's employment and reasons there for within a period of two days as the respondents' disciplinary procedure however the respondent took approximately 6 months to come to the decision. This according to Counsel made the termination unprocedural and unlawful.

13. The respondent's Counsel, Mr. Makori on the other hand submitted that the respondent had demonstrated that the claimant was summarily dismissed from employment on account of being in fundamental breach of his contract of employment. According to Counsel, the claimant was notified of the charges that he was facing, he attended a disciplinary hearing where he was heard alongside his colleague Mr. William Nyandong before a decision to dismiss him was arrived at. Regarding the allegations of discrimination over the length of time it took before the results of the disciplinary hearing could be communicated, Counsel submitted that the allegations against the claimant and his colleague were serious and the management had to take time to consider the findings of the investigations before a final decision could be made.

14. A termination of employment takes two stages. First there must be a valid and justifiable reason for termination and once this is established, the termination must be carried out in accordance with the procedure laid down in the employers' human resource manual or as set out in the Employment Act or both. The most important thing to be ensured is that there is a valid or justifiable reason for termination and that the termination must be conducted by following a fair procedure. This includes furnishing the employee with the charges he or she is facing and affording them an opportunity to defend themselves. It does not matter whether the employee's guilt is apparent on the face of the record. He or she must be heard no matter how weak or useless his or her defence might seem to be. However, the conduct of the disciplinary hearing does not have to take the rigour of a Court trial. It suffices that the employee was notified of the charges and afforded an opportunity to respond before the decision to dismiss is made.

15. The claimant in this matter was accused of misappropriating money from the respondent meant for paying bus fare to newly recruited guards who he was training. An accusation of misappropriation is serious and no doubt justifies summary dismissal if proved. So what proof did the respondent have? According to the respondent, a payment schedule was prepared by Mr. Nyandong' and sent to the claimant at Embakasi together with the funds to be disbursed. This schedule (appendix 2) was to be administered by the claimant and each guard was to sign against his or her name upon payment. This document once administered was to be surrendered for accounting purposes. This according to the respondent did not happen. Besides some of the guards claimed to have been paid by the claimant denied receiving payment.

16. The claimant in his defence before Court stated that all the money he received he disbursed. He however conceded that some deductions were made from his salary on account of some allowance he was paid but could not account for. Despite the seriousness of these allegations the claimant never thought it necessary to call either at the disciplinary hearing or before the Court, some of the guards he claims to have paid to give evidence in his support. He merely asserted that all the money he received he disbursed as required without more. To this extent the respondent had a valid and justifiable reason to terminate the claimant's services and the Court so holds.

17. Regarding the procedure for termination, the claimant while denying participating in any, curiously admits that the minutes dated 5th August, 2009 were not a true reflection of what transpired. He further stated that he was aware of the accusations against him but wanted them proved.

18. As observed earlier in this judgment and other cases before this Court of similar nature, a disciplinary hearing in an employment relationship is not a Court trial. The rigours of a Court trial therefore cannot be strictly applied without occasioning what is purely a management process, unreasonable difficulty. The Court has considered the manner in which the allegations against the claimant were processed and is persuaded that they were reasonable and in accordance to fair hearing procedures contemplated in the respondent's human resource policies and rules of natural justice generally.

19. In conclusion the Court finds this claim unmerited and dismisses the same with no order as to costs.

20. It is so ordered.

Dated at Nairobi this 12th day of February 2016

Abuodha J. N.

Judge

Delivered this 12th day of February 2016

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge