



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 939 OF 2014

(BEFORE HON. LADY JUSTICE HELLEN S. WASILWA ON 1ST FEBRUARY 2016)

PATRICK NANGALA JUMACLAIMANT

VERSUS

RADAR SECURITY LIMITEDRESPONDENT

JUDGMENT OF THE COURT

1. The Claimant filed his Statement of Claim on 5/6/2014 through the firm of Messrs Diro & Company Advocates. The Claimant's claim is that the Respondents unlawfully dismissed him and refused to pay his terminal benefits and also failed to issue him with an acceptable certificate.
2. The Claimant's case that he was employed by the Respondent as a Security Guard from December 2010 and worked as such until 24th February 2014 when the Respondent summarily dismissed him claiming he had been absent from his place of assignment.
3. The Claimant on his part avers that contrary to what the Respondents allege, the Claimant had been guarding at Nellea Limited in Karen where he had been deployed. He developed an acute abdominal pain and he notified his immediate in-charge one Sikuta with whom the Claimant was jointly guarding the premises and left for medical intervention at the nearby Salama Health Centre Limited as per his treatment notes (Appendix 2).
4. The Claimant further claims that on 1st February 2014, he went back to Salama Health Care Limited for review and proceeded to recuperate at home on medication.
5. The claimant then avers that on 17th February 2014, he reported at the Respondent's head offices along Argwings Kodhek Road for re-deployment honestly believing that his in-charge had informed the Respondent of his health condition and obtained a replacement at Nellea Limited in Karen only to be asked by the Controller one Ezekiel Agoh to report back the following day for re-deployment.
6. The Claimant reported again the following day but was kept waiting until 27th February 2014, when he was handed a termination letter and ordered to vacate the premises forthwith.
7. The Claimant denies absconding duty on 18th February 2014 as alleged. He avers that he was never issued with a Notice to show cause or offered an opportunity to meet his accusers and explain his side of the story before the dismissal. He avers that he had served the Respondent diligently for 3 years without any disciplinary issue warning 13,310/= per month. He avers that he

was never paid his February 2014 salary.

8. He claims payment of February 2014 salary plus 3 months salary in lieu of leave; house allowance that was never paid. He also demands that he be issued with an acceptable certificate of service as the one issued to him was not correct (Appendix 4). He also seeks for 1 months salary in lieu of notice and compensation for unlawful termination plus service pay plus costs of this suit.
9. The Respondent on their part though served never filed any defence. Hon. J. Marete had directed that the matter proceeds by way of submissions which the Claimant has filed.
10. I have considered the submissions herein filed. I find that the Claimant's claim is unopposed. The Claimant has explained the circumstances under which he was dismissed and there is no evidence to the contrary. On whether the Claimant absconded duty as alleged in the dismissal letter has not been established as he was not given a chance to explain his absence. In his Appendix 2, he produced his treatment notes to show he was unwell.
11. Without any evidence to the contrary, I find that Claimant has established his case as required by law and I award him as follows:

1. **1 months salary in lieu of notice = 13,310/=**
2. **House allowance at 15% of salary for 3 years = 15% of 13,350 x 36 = 240,300/=**
3. **Service pay equivalent to 15 days salary for each year worked = $\frac{1}{2} \times 13,350 \times 3 = 20,025/=$**
4. **12 months salary as compensation for unlawful termination = 12 x 13,359 = 160,200/=**

TOTAL = 433,835/=

5. **Issuance of an acceptable Certificate of Service.**
6. **Costs of this suit.**

Read in open Court this 1st day of February, 2016.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Miss Mambo holding brief for Shigenje for Claimant – Present

Respondent – Absent