



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 1594 OF 2013

CHRISANTUS SHIWUNDU NANGIRA..... CLAIMANT

VERSUS

BRINKS SECURITY SERVICES LTD.....RESPONDENT

JUDGMENT

1. This suit was filed on 3rd October 2013 by the Claimant seeking;
 - i. One month's salary in lieu of notice Kshs 12,000
 - ii. Payment in lieu of leave not taken for two years Kshs 24,000 and
 - iii. Twelve months maximum compensation for wrongful and unfair termination of employment.
2. The Claimant relies on the pleadings, annexures thereto, oral testimony under oath and written submission filed on 11th November 2015.
3. The suit is opposed vide a response to the memorandum of claim filed on 21st November 2013.
4. The Respondent denies all the particulars of claim and puts the Claimant to strict proof thereof.

Facts of the claim

5. The Claimant was employed by the Respondent on 10th September 2010 as a Supervisor of Security guards. He worked diligently with no adverse record until the 6th October 2011 while on night supervision circuit at 10 p.m. taking a ride on a motorbike ridden by his colleague Peter Munya they had an accident. The Claimant fell unconscious and found himself at Kenyatta National Hospital.
6. The Claimant was admitted for 1 ½ months and was placed thereafter on outpatient clinic which he attended until February 2013. The hospital expenses were taken care of by the employer. At the time the Claimant earned Kshs 12,000 salary per month. The Claimant told the court that he was not paid salary for February 2013 and was asked to go home and await to be recalled if there was work.
7. The Claimant was not recalled and he went back in June 2013 but was told to wait. The Claimant served for one year and was not granted annual leave during the period. His colleague Peter Munya died on the spot. On 19th June 2013, the Human Resource manager advised the Claimant that his services were no longer required. The Claimant told the court that he was shocked by the manner in which his employment was terminated without grant of a certificate of service and claims compensation for the wrongful and unfair termination of employment.

Response

8. The Respondent pleaded in the memorandum of response that the Respondent did not dismiss the Claimant from work but the Claimant deserted duty upon being requested to go for medical check up to confirm whether he was medically fit to resume his duties. The Claim for wrongful dismissal is therefore denied *in toto*.
9. The Respondent called RW1 (Raymond Nzioka) in support of its case. The witness was employed by the Respondent after the Claimant had left employment and therefore he only relied on the documents found in the Claimant's file. The witness relied on a letter dated 13th August, 2013 in response to a demand letter by the Advocate for the claimant in which the Respondent stated that the Claimant did not furnish the Respondent with a letter from his doctor confirming that he had fully recovered to be allowed to resume duties.
10. The Respondent stated that the Claimant had refused to co-operate with the Respondent towards settlement of his workman compensation claim for injury sustained while on duty. He did not go to see Doctor P. M. Wambugu for a second medical examination as per insurance letter dated 26th July 2013.
11. RW1 said that the Claimant's job necessitated him to be fit since he rode on a motor cycle and had sustained broken femour bones on both legs. RW1 denied that the Claimant was dismissed from work and prays that the suit be dismissed with costs.

Determination

12. The matter for determination is whether the Claimant deserted work or he was dismissed from employment after sustaining injury in course of employment.
13. The Court has carefully considered the aforesaid evidence by the Claimant and that by the Respondent and has concluded as follows:
14. That the Claimant reported back to work upon being discharged from hospital and after attending outpatient clinic for a considerable period of time until February 2013, but was not allowed to resume duties by the respondent.
15. That the salary for the Claimant was thereafter stopped and he was not recalled back to work. The Claimant wrote a demand letter through his advocate on 18th June 2013 after the Human Resource Manager advised the Claimant on 12th June 2013 that his services were no longer required.
16. It is the court's finding that the Claimant has established on a balance of probability that he was fit to resume work and infact reported to work severally after he had recovered from injuries sustained in the course of his employment but the Respondent wrongfully and without justification dismissed the Claimant from work without notice, without giving him a letter of termination and certificate of service and without paying the Claimant any terminal benefits.
17. The dismissal from employment was not for a valid reason and the manner in which it was effected was not fair. The dismissal violated Sections 41, 43 and 45 of the Employment Act, the Respondent having failed to produce a single letter in which it requested the Claimant to visit a medical doctor for check-up and or advising the Claimant the reasons for which his employment was no longer desired.
18. The Claimant is entitled to compensation in terms of section 49(1)(c) as read with section 49(4) of the Employment Act, 2007 for the reasons aforesaid and in particular, that the dismissal was wrongful and unfair. That no terminal benefits or notice was given to him. That he did not receive a certificate of service to enable him look for alternative employment and that the dismissal was solely for injuries sustained in the course of his duties.
19. The court does not believe that the Claimant failed to co-operate towards processing of his compensation under workman compensation, especially because RW1 had no personal knowledge of the matter, having been employed by the Respondent after the Claimant's employment had ceased.
20. In the final analysis the court awards the Claimant;
 - i. 10 months salary being compensation for the wrongful and unfair dismissal in the sum of Kshs 120,000.
 - ii. Kshs 12,000 in lieu of notice not given.
 - iii. One month's salary Kshs 12,000 in lieu of one year leave not taken.

Total award to the Claimant is Kshs 144,000.

21. The Award is payable with interest at court rates from date of filing suit till payment in full.
22. The Respondent is directed to provide the Claimant with a certificate of service within 30 days from date of this judgement.
23. The Respondent is to pay the costs of the suit.

Dated and delivered at Nairobi this 18th day of March 2016

MATHEWS N. NDUMA

PRINCIPAL JUDGE