



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO 23 OF 2014

KENNEDY GORI.....CLAIMANT

VS

XFOR SECURITY SERVICES (KE).....RESPONDENT

AWARD

Introduction

1. By a Memorandum of Claim dated 15th January 2014 and filed in Court on 7th February 2014, the Claimant has sued the Respondent for unlawful termination of employment. In spite of due service, the Respondent did not file a response. The Court therefore heard the Claimant ex parte.

The Claimant's Case

2. The Claimant states that he was employed by the Respondent as a Security Guard at a monthly salary of Kshs. 13,000 effective 21st February 2012. The Claimant worked for the Respondent until 21st January 2013 when his employment was terminated without notice.

3. It is the Claimant's case that the termination of his employment was unlawful and unfair. He claims the following:

- a) One month's salary in lieu of notice..... Kshs. 13,000
- b) Accrued leave for 11 months..... 11,500
- c) Public holidays (10) days..... 8,666
- d) Refund of uniform deposit..... 10,000
- e) Overtime (1200 hours)..... 75,000
- f) Full compensation for unlawful termination..... 156,000
- g) Certificate of service
- h) Costs plus interest

Findings and Determination

4. There are two issues for determination in this case:

- a) Whether the Claimant's employment was unlawfully terminated;
- b) Whether the Claimant is entitled to the remedies sought.

The Termination

5. The Claimant told the Court that his employment was terminated on allegations of sleeping while on duty. There was however no evidence that the Claimant was offered any opportunity to respond to these allegations as required by Section 43 of the Employment Act, 2007.

6. It seems to me therefore that at the time the Claimant left the Respondent's employment, the reason for the termination had not been established. Further, in terminating the Claimant's employment, the Respondent ignored the mandatory procedure set out under Section 41 of the Employment Act. That being the case, the Court finds that the termination was both unjustifiable and unprocedural.

Remedies

7. In light of the foregoing finding, I award the Claimant three (3) months' salary in compensation for unlawful and unfair termination of employment. In making this award, I have taken into account the Claimant's length of service as well as the Respondent's conduct in the termination process. I further award the Claimant one (1) month's salary in lieu of notice. The claim for prorata leave pay also succeeds and is allowed.

8. The claims for public holidays, overtime and uniform deposit were however not proved and are dismissed.

9. Cumulatively I make an award in favour of the Claimant in the following terms:

- a) 3 months' salary in compensation..... Kshs.39,000
- b) 1 month's salary in lieu of notice..... 13,000
- c) Prorata leave for 11 months (13,000/30x1.75x11).....8,342

Total 60,342

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10. The award amount will attract interest at court rates from the date of the award until payment in full.

11. I direct the Respondent to issue the Claimant with a certificate of service and to pay the costs of this case.

12. Orders accordingly.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 22ND DAY OF
JULY 2016**

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JUDGE

Appearance:

Mr. Mageto for the Claimant

No appearance for the Respondent