



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 1589 OF 2014

ALFRED ONYANGO OTIENO.....CLAIMANT

VERSUS

G4S SECURITY SERVICES (K) LTD.....RESPONDENT

JUDGMENT

1. By a memorandum of claim filed on 12th September, 2014, the claimant averred that he was employed by the respondent on 13th March, 2007 as a guard and worked until 20th March, 2014 when the respondent issued him with a certificate of service with advise that he should seek alternative employment elsewhere. Prior to dismissal the respondent from 13th March 2013 for unknown reasons stopped deploying him on any assignment and continuously advised him to be reporting to their offices.
2. The claimant further averred that during the period he worked he used to go on leave but never took leave for the year 2011 and 2012 nor was he paid in lieu. According to the claimant his dismissal was therefore unfair and sought that the Court so order and further that he be compensated for the dismissal.
3. The respondent on its part averred that the claimant's employment was terminated after he deserted duty. The respondent further denied that the claimant was a diligent worker and averred that on diverse dates he received warning letters.
4. In his oral evidence in Court he stated that he was hired on permanent basis on April, 2008 at a salary of Kshs.9,400 per month. He further stated that prior to termination he was assigned to Ecobank Tom Mboya Street. He was removed from there on 13th March, 2013 since new guards from a different company were brought. He was asked to report to headquarters. His colleagues were allocated new assignments but he was told to wait a bit. On 2nd May, 2013 he was asked to return his uniform. In cross-examination he denied leaving G4s (respondent) for Polyflex.
5. The respondent's witness Mr. Bonface Ngungu informed the Court that the claimant like other guards was required to sign a postage sheet which would be brought around by the in-charge. The postage once signed would be brought to the respondent's offices and loaded into the system which then produces the muster roll. According to the witness, the muster roll showed the claimant was absent between 15th April and 3rd May. The issue was picked when computing overtime for May. It was noticed that the claimant was not earning overtime as his colleagues. Investigations revealed the claimant was not working hence he could not earn overtime. A decision was therefore made to terminate the

claimant's services. He further stated that despite not being at work in the month of February, March and April the claimant was paid. It was his evidence that it was not possible to ask the claimant to show cause because he was not reporting on duty nor did the respondent know his whereabouts. Regarding leave he stated that the claimant went on leave in 2011/2012 and was paid applicable allowances.

6. According to the witness the respondent never lost the Ecobank contract. The claimants colleagues continued working there. According to him, the claimant left for another job. The witness further stated that an attempt was made to contact the claimant through telephone.

7. Dismissal on account of unauthorized absence from work requires that an employee be notified of the intention to do so. This is necessary because there could be legitimate reasons why an employee is unable to be at his or her workplace. In this particular case, the claimant averred that he was never allocated any duties though he reported to work. The legal position is that the duty is cast upon the employer to prove or justify reasons for dismissing an employee. In this particular case no sufficient material has been laid before the Court to show attempts were made to contact the claimant and that he was informed that his dismissal for absconding duty was being considered. Further, it was odd that for three months the respondent paid the claimant's salary while he never reported to work.

8. In the circumstances the Court finds that the respondent has failed to prove that it had valid and justifiable reason for dismissing the claimant. The Court therefore declares the dismissal wrongful and unfair and awards that the claimant as follows:-

Kshs.

- (a) One month's salary in lieu of notice9,572.00
- (b) Six months salary as compensation for unfair termination of services.....57,432.00
- (c) Costs of the suit

9. Other heads of claim are disallowed since they were not sufficiently proved.

10. It is so ordered.

Dated at Nairobi this 14th day of October 2016

Abuodha Jorum Nelson

Judge

Delivered this 14th day of October 2016

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha Jorum Nelson

Judge