

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 103 OF 2016 CONSOLIDATED WITH CAUSE 107 OF 2016

RICHARD MBUTHIA KAMENYA.....1ST CLAIMANT

GEORGE KAMOTHO MUTURI.....2ND CLAIMANT

VERSUS

BROADBAND COMMUNICATION NETWORK LIMITED..... RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 25th November, 2016)

JUDGMENT

The claimants filed their respective statements of claims against the respondent on 23.05.2016. The claimants were employed by the respondent as guards. Their case is that their contracts of service were terminated on 11.11.2015 without a notice and a hearing as envisaged in section 41 of the Employment Act, 2007 and the termination was without a reason as envisaged in section 43 of the Act. The claimant's case is that the termination was unfair.

The claimants have computed their respective terminal dues being 3 months' pay in lieu of termination notice; a years' salary for unfair termination; severance pay; unpaid leave for 5 years; pay for work on public holidays; salary for 11 days worked in November 2015; underpayment for 5 years; weekend overtime; and weekdays overtime .

The respondent, despite service, did not enter appearance or file a response. The 1st claimant has claimed for Kshs.561, 229.80 and the 2nd claimant Kshs.433, 930.97 as set out in the statements of claim. The claimants have not justified the claim for severance pay as they did not allege redundancy as envisaged in section 40 of the Employment Act, 2007. Further, the claimants did not justify three months' pay in lieu of termination notice. Under section 35 of the Employment Act, 2007 each would be entitled to one month pay in lieu of the termination notice. They will be awarded as prayed less two months pay for notice and less the severance pay.

The court considers that the claimants desired to continue in employment and did not contribute to the termination. They are entitled to the 12 months' compensation for unfair termination as prayed for.

The court has considered the pleadings, the witness statements, the documents and submissions on record and returns that the claimants have established their cases on a balance of probabilities as prayed for and they are awarded accordingly but subject to the foregoing findings by the court. In absence of a defence, the respondent is deemed to have admitted the claims as specifically pleaded.

In conclusion, judgment is hereby entered for the claimants against the respondent for:

- a. The declaration that the termination of the employment was unfair, unprocedural, wrongful and illegal.
- b. The declaration that the act by the respondent not to pay the claimants' terminal dues was unlawful, illegal, and amounts to breach of the contract of employment.
- c. The respondent to pay the 1st claimant **Kshs. 528, 154.80** and the 2nd claimant **Kshs. 408, 205.97**

by 15.12.2016 failing interest to be payable at court rates from the date of this judgment till full payment.

d. The respondent to pay the claimants' costs of the suit.

Signed, dated and delivered in court at **Nyeri** this **Friday, 25th November, 2016.**

BYRAM ONGAYA

JUDGE