



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA

CAUSE NUMBER 24 OF 2016

BETWEEN

SAMUEL MASHOMBO BALO
CLAIMANT

VERSUS

BABS SECURITY SERVICES LIMITED
RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Mwaure & Mwaure Waihiga Advocates for the Claimant

No appearance for the Respondent

JUDGMENT

1. The Claimant filed his Statement of Claim on the 25th January 2016. He states he was employed by the Respondent Company as a Security Guard on 1st July 2013. His contract was terminated by the Respondent, on 1st July 2015. He earned Kshs. 9,100 on exit. He was not given reason for termination. He was simply advised there was no more work for him, and another Employee was recruited in his place. He was not paid terminal dues. The Claimant states termination was unfair, and seeks the following orders against the Respondent:-

- a. 1 month salary in lieu of notice at Kshs. 9,100.
- b. Unpaid annual leave of for 2 years at Kshs. 14,000.
- c. Severance pay for 2 years at Kshs. 10,500.
- d. Public Holidays' pay for 2 years at Kshs. 14,000.
- e. Unremitted N.S.S.F for 1 year at Kshs. 4,800.

f. Compensation for unfair termination at Kshs. 109,200.

Total Kshs. 162,300

g. A declaration that termination was unfair.

h. Costs, interest and any other relief.

2. The Respondent was served with the Court Summons, Mention Notice and Hearing Notice as shown in the various Affidavits of Service on record. The Respondent did not enter appearance, file any Response, or attend Court on any occasion. The Claimant sought and was allowed to dispose of his Claim through his Pleadings, Documents and Submissions.

3. He repeats most of the averments contained in his Statement of Claim, in the Submissions. He submits the Respondent did not observe the provisions of Sections 41 and 43 of the Employment Act. He was not given the benefit of Section 40, assuming there was a genuine redundancy situation. He submits he merits grant of the Certificate of Service, under Section 51 of the Employment Act 2007.

The Court Finds:-

4. The Claim is unchallenged, the only question to be answered by the Court being, whether on the evidence presented by the Claimant, the various prayers are merited. The Court accepts the Claimant's evidence on his employment history and his terms and conditions of service. It is accepted the Respondent terminated the Claimant's contract of employment on 1st July 2015, advising the Claimant that there was no more work. The advice so given, places the Claim within the law of redundancy under Section 40 of the Employment Act 2007.

5. The Respondent did not comply with the procedural requirements of Section 40, and termination was therefore unfair. There were no redundancy benefits paid to the Claimant. It was not shown why only his position was affected. The genuineness of the redundancy situation was doubtful, given that the Respondent engaged another Employee in the same position, after the Claimant left. On the whole, termination through redundancy was unfair and the Claimant deserves compensation for unfair termination.

6. He is granted 10 months' salary in compensation for unfair termination at Kshs. 91,000.

7. The prayer for 1 month salary in lieu of notice is allowed at Kshs. 9,100.

8. The Claim for annual leave pay at 42 days at a rate of Kshs. 350 per day is allowed, at Kshs. 14,700.

9. Severance pay is granted at 15 days' salary for each of the 2 years completed in service at Kshs. 10,500.

10. The Claimant did not specify which Public Holidays, holiday pay is pegged. The computation at Kshs. 14,000 is not detailed. The hourly rate, and the amount of hours worked, is not shown. It is not safe to allow the claim without these details. The prayer is declined.

11. Similarly the evidence on the claim for refund of N.S.S.F dues is insufficient. The Court's view is that if there were contributions which were deducted and not remitted, such contributions are in the nature of statutory deductions. They should be paid to the relevant Fund by the Respondent, to enable the Claimant enjoy his full social security benefits. The contributions are not supposed to return to the Claimant's pocket if unremitted; the Claimant ought to pursue his former Employer to credit his account under the N.S.S.F Act. Enforcement can be achieved under that legal regime. The prayer for refund of N.S.S.F contributions is declined.

12. The Respondent shall pay costs of the Claim.

IN SUM IT IS ORDERED:-

a. Termination was unfair.

b. The Respondent shall, within 21 days of this Judgment, pay to the Claimant: the equivalent of 10 months' salary in compensation for unfair termination at Kshs.91,000; notice pay at Kshs. 9,100; annual leave pay at Kshs. 14,700; and, severance pay at Kshs. 10,500- total Kshs.125,300.

c. Costs to the Claimant.

d. Interest to attract at the rate of 14% per annum from the date of Judgment, if the sum decreed is not satisfied within the given 21 days.

Dated and delivered at Mombasa this 9th day of December, 2016.

James Rika

Judge