



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT KISUMU
CAUSE NO. 154 OF 2013

(Before Hon. Justice Hellen S. Wasilwa on 12th January, 2015)

STEPHEN M. ONYIENGO CLAIMANT

-VERSUS-

J.R.S GROUP SECURITY LTD RESPONDENTS

JUDGMENT

This claimant Stephen Onyiengo filed his Memo of Claim on 11.6.2013 through the firm of M/s Chepkwony & Co. Advocates. The claimant's claim is that he was employed by the respondents as a guard from late September 2003 to 12th November 2012 when the respondents unlawfully terminated his services and refused to pay him his due. The claimant avers that, the respondents director one Rafiki had unlawfully deducted Kshs 2,500/= from his salary and when he went to demand for the same, he was sacked on the spot.

The claimant contacted his union to intervene and he also reported the matter to the labour office but the respondent refused to attend the meetings he was summoned to. He also avers that he was underpaid during the period he worked as per **Appendix 1 to 9** in his further list of documents. He wants the court to direct that he be compensated accordingly. He stated that he was also not being issued with a payslip. He also prays for damages. The claimant denies absconding or escaping from work. He denies he was subjected to any warning letters and denies writing an apology dated 14.11.2012 which he avers that is a forgery. He also denies forging salary vouchers.

He called 1 witness, the union branch Secretary who told court that he calculated the claimant's underpayments as per the wages orders of 2006 to 2008, 2009, 2010, 2011 and 2013. He made his calculation as per **Appendix 2 to 9**. He also noted that the claimant never went on leave for the 9 years he worked and his NSSF dues were not being remitted. He worked out claimant's dues as per **Appendix 4** which comes to Kshs 1,254,550.99/=.

The respondents filed their defence to the Memo of Claim on 25.6.2013 through the firm of Bruce Odeny & Co. Advocates. They contend that the claimant absconded duty on November 2012 and never showed up at his assigned work stations. All efforts to reach him were in vain. The deny unlawfully terminating the claimant's services.

Having heard evidence of both parties. The issues for determination are as follows:-

1. **Whether the claimant absconded duty or was sacked.**
2. **Whether the claimant is entitled to remedies sought.**

On 1st issue, the claimant avers that he was terminated on 12.11.2012. On 26.4.2013, his advocate wrote a demand notice to the respondents. This was never responded to. Prior to this on 24.1.2013, the labour officers also informed the respondents of a complaint raised by the claimant at the labour office, the respondents also chose to keep quiet. Their later assertion that the claimant absconded duty is an after thought which they never raised to the labour office nor the counsel of the claimant.

It is therefore apparent that the claimant was unlawfully terminated by the respondents as he was not given any notice, nor any hearing as envisaged under S. 41 of Employment Act.

Is he entitled to remedies he has sought? I do find that the claimant is entitled to the following remedies?

1. 1 month salary in lieu of notice = Kshs 10,204.37

2. Service benefits = 15 days salary for each year worked (9 years) = $15 \times 9 \times 8873.3 / 30$ = Kshs 39,929.85

3. Underpayment of wages since 2006 to 2011 = Kshs 82,456/=

4. 12 months salary as compensation for unfair termination = $10,204.37 \times 12$ = Kshs 122,452

TOTAL due KSHS 255,038/= plus costs.

HELLEN S. WASILWA

JUDGE

12/1/2015

Appearances:-

N/A for both parties

CC. Wamache