



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 2419 OF 2012

(Before Hon. Justice Hellen S. Wasilwa on 7th May, 2015)

PATRICK OBIERO AJUMACLAIMANT

VERSUS

MARS SECURITY GUARDS LIMITEDRESPONDENT

JUDGMENT OF THE COURT

1. The Claimant herein filed his Memorandum of Claim on 29/11/2012 through the firm of Namada & Company Advocates. His claim is for unlawful and unfair dismissal plus non-payment of terminal dues and compensatory damages.

Claimant's case

2. The Claimant avers that from 16th March 2001 upto the 27th August 2012, he was employed by the Respondent as a Security Guard. He avers that throughout the said period, he worked for the Respondent with due diligence and without blemish to the satisfaction of the Respondent. His last salary was computed at 10,850/= per month.

He stated that on 27th August 2012, he reported to work as usual from annual leave. By 11 am, he had not been assigned any duties by the Respondent. Upon inquiring as to why he had been ignored, he was informed that he should re-apply for his job. When he asked why he should do this, the security guards were ordered to escort him out of the premises with strict orders not to allow him back to the premises at any time. He was then informed that he had been dismissed from employment.

3. The Claimant's position therefore is that his purported summary dismissal was unfair, illegal and extremely harsh considering that he was innocent and had served the Respondent for 11 years without blemish. No explanation or reasons were given for his dismissal.

He avers that he was also not given any hearing before the said dismissal. His claim is as enumerated at paragraph 9 of his memorandum of claim all totaling 342,860/=.

4. He also seeks for an order that his dismissal or termination was illegal and unlawful and he is therefore entitled to payment of his terminal dues and compensatory damages as pleaded. He also seeks an order that the Respondent be compelled to issue him with a Certificate of Service.

The Respondent's Case

5. The Respondent on the other hand filed their response on 18/2/2013 through the firm of S. Ndege & Company Advocates. They deny employing the Claimant for the period 10/3/2011 to 27/8/2012 as claimed but instead state that they entered into a 2 year contract with the Claimant running from 22/05/2011 to 21/05/2013 with a consolidated pay of Kshs.11,384/=. They deny that the Claimant worked for them without blemish at the salary of 10,850/= as claimed.
6. They further contend that on 31/11/2012 they notified the District Labour Officer Industrial Area that the Claimant had failed to report back on duty since August 2012 and had therefore deserted duty and his whereabouts were unknown.

The Respondents further state that they deposited at the Labour Office Kshs.13,343/= Claimants dues. They deny terminating the Claimant as alleged and therefore submit that the claim is not justified and should therefore be dismissed.

Issues of determination

7. Upon hearing both parties and upon consideration of the submissions filed, the issues for determination are as follows:
 1. ***What length of period did the Claimant work for Respondent.***
 2. ***Whether the Claimant absconded duty or was terminated by the Respondent.***
 3. ***If he was terminated whether the termination was fair and justified.***
 4. ***Whether the Claimant is entitled to prayers sought.***
8. On the 1st issue, the Respondents have stated that the Claimant worked for them for a period of 2 years on contract. The Claimant on the other hand stated that he worked continuously for 11 years with effect from 2011 to 2012. The RW1 – one Jackson Orundo in his oral evidence however stated that the Claimant was initially employed for 3 months on probation and therefore he got a 6 month contract which graduated to a 2 year contract. Only the contract document for 22/5/2011 to 21/5/2013 was attached.

Cross examined by Counsel for Claimant he was not able to explain where the other alleged contracts were.

9. The Claimant in his supplementary list of documents exhibited payment vouchers for the year 2004 and a wage sheet for 2003 which showed that during that period he was working for the Respondent. When cross examined about these vouchers and payment sheets the RW1 admitted that they had not filed any objection to the said documents.

The Claimant's Appendix (iii) is NSSF statement dating from 1999 to 2012 and the name of his employer indicated is the Respondent herein Mars Security Guards with payments made ranging from 2004 to 2012.

The Respondents assertion that the Claimant worked for them only from 2011 to 2012 is therefore not tallying with evidence on record. Also it was the duty of Respondent to supply the Claimant with a contract letter for the period which Respondents have not proved they as provided for under Section 9 (1) and (2) of the Employment Act 2007.

It is therefore this court's finding that the averment by the Claimant that he worked for Respondent from 2001 is the correct position.

10. On the 2nd issue, the Respondents contend that the Claimant absconded duty. The Claimant on his part has stated that he was orally dismissed. There is no termination letter exhibited from the Respondent.

The Respondent had submitted that the Claimant absconded and they reported his disappearance to the Labour Officer. However, the RW1 admitted that his case was filed in court on 29/11/2012 but the Respondents wrote to the Labour Officer on 31/11/2012 a clear indication that the Respondent wrote to the Labour Officer as a cover-up of their action. They had also been served with a demand notice Appendix (ii) on 2/10/2012 but they declined to receive it.

The Court finds that the Respondent's claim that Claimant absconded is not true as they were aware of his whereabouts and only made an attempt to reach the Labour Officer after this case was filed in court and summons served upon them.

11. On the 3rd issue, the mode of terminating the Claimant as explained above was verbal. The Claimant was not given any hearing. Section 41 of Employment Act 2007 was contrived. Rules of natural justice were flouted. I therefore find the dismissal unfair and find for Claimant and order as follows:

1. **A declaration that the dismissal of the Claimant was unfair and unjustified.**
2. **That the Claimant is entitled to 1 months salary in lieu of notice = 11,384/=.**
3. **The Claimant is entitled to his NSSF dues deducted but not remitted from the year 2001 to 2003 = 200 x 36 = 7,200/=.**
4. **12 months salary for unlawful dismissal**

$$= 12 \times 11,384 = 136,608/=$$

$$\text{TOTALS} = 155,192/=$$

5. **The Claimant be issued with a Certificate of Service.**
6. **Respondent to meet costs of this suit.**

It is so ordered.

Dated and delivered in open Court this 7th May, 2015.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Namada for Claimant

Auka holding brief for Mr. Ndege for Respondent