



REPUBLIC OF KENYA
 IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
 AT MOMBASA
 CAUSE NUMBER 83 OF 2015

BETWEEN

- 1. CHARLES NYEGENYE
- 2. GEORGE OUKO CLAIMANTS

VERSUS

HATARI SECURITY SERVICES LIMITED RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Mr. Nyange Sharia Advocate instructed by KITUO CHA SHERIA, Advocates for the Claimant

No appearance for the Respondent

ISSUE IN DISPUTE: UNFAIR AND UNLAWFUL TERMINATION

AWARD

[Rule 27 [1] [a] of the Industrial Court (Procedure) Rules 2010]

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- 1. The Claimants filed their joint Statement of Claim on 24th February 2015. They state they were employed by the Respondent as Security Guards, from 19th July 2012 to 20th July 2013 when their contracts of employment were unfairly and unlawfully terminated. They earned a monthly salary of Kshs. 7,500 as of the date of termination. They state their contracts were unfairly terminated, and that during service, they were denied various employment benefits. They pray for the following orders against their former Employer:-

- a. A declaration that termination of the Claimants' employment was unfair and unlawful.
- b. A declaration that the Claimants were entitled to uniform and house allowances.
- c. The Respondent is ordered to pay to the Claimants the following: **Charles Nyegenye**- 1 month salary in lieu of notice at Kshs. 7,500; uniform allowance at Kshs. 200 per month; underpayment of salary at Kshs. 2,071 totaling Kshs. 28,994; house allowance at Kshs. 2,500 per month adding up at Kshs. 35,000; and 12 months' salary in compensation for unfair termination at Kshs. 90,000- total Kshs. 164, 294. **George Ouko**- 1 month salary in lieu of notice at Kshs. 7,500; uniform allowance at Kshs. 200 per month at a total of Kshs. 24,852; house allowance of Kshs. 2,500 per month added at Kshs. 30,000 per month; and compensation for unfair termination the equivalent of 12 months' salary at Kshs. 90,000- total Kshs. 154,752.
- d. Certificates of service to issue.
- e. Any other suitable relief.
- f. Costs.

2. The Respondent, although served with the Summons and the Claim, filed nothing, and did not attend Court on any occasion. The Claimants proceeded with their evidence *ex parte* on the 10th July 2015.

3. The 1st Claimant testified he worked for the Respondent for 1 year. His salary was paid through the Equity Bank as borne out in his Bank Statement attached to the Claim. His Manager found him at the premises where the 1st Claimant had been assigned guarding duties on the 19th July 2013. The Manager told him to report to the Office the following day, the 20th July 2013. Upon report the Manager alleged the Claimants were drunk on duty the previous day. The Claimants were asked to remove their Work Uniforms, and dismissed on the spot. The 1st Claimant testified he and his Colleague were not drunk. The Claimants had Kshs. 200 deducted from their salaries each month as Uniform Allowance. On surrendering the Uniform they were not paid this money. They were underpaid. They were denied house allowance. They were not availed housing accommodation.

4. The 2nd Claimant associated himself fully with the testimony of the 1st Claimant. He added they had been assigned duties at Railways in Mombasa. The Manager found the 2nd Claimant patrolling the area on the 19th July 2013. The Manager alleged the Claimants had been drinking while on duty and dismissed them the following day as narrated by the 1st Claimant. The 2nd Claimant similarly was not paid his dues under the items mentioned by the 1st Claimant in his evidence. The Claimants pray the Court to allow their respective Claims.

The Court Finds:

5. The Pleadings, Evidence and Submissions of the Claimants are unchallenged. The Respondent Employer had the duty to justify its decision, and show termination was carried out fairly, as demanded by Section 41, 43 and 45 of the Employment Act 2007. There is no doubt the Claimants were employed by the Respondent for about 1 year each, as Security Guards. Their contracts were terminated on 20th July 2013. The Respondent alleged the Claimants were drunk while on duty. This allegation was not substantiated in the absence of the Respondent from the proceedings. There was no hearing granted to the Claimants to answer any allegations. Termination was unfair on all fronts, and the Claimants are granted compensation the equivalent of their 12 months' salary as pleaded.

6. It was demonstrated they were underpaid. Each received Kshs. 7,500 per month, below the minimum wage threshold allowed by the law. The General Order of 2012 set the wage floor for Security Guards in Mombasa at Kshs. 9,571. They were not paid house rent allowance or availed reasonable housing at or near their place of work as required under Section 31 of the Employment Act 2007. Their Employer deducted Kshs. 200 from them every month as Uniform Allowance. On termination the Employer retained the Uniforms and the Claimants' accumulated deductions used in procuring those Uniforms. This amounted to theft by an Employer. The Respondent treated its Employees below the minimum employment standards while the Claimants were in service, and subjected them to similar treatment on termination. The respective Claims have merit. IT IS ORDERED:-

- a. ***The Claimants' contracts of employment were unfairly terminated.***
- b. ***The Respondent shall pay the 1st Claimant a total sum of Kshs. 164,294, and the 2nd Claimant Kshs. 154,752, in terminal benefits and compensation for unfair termination.***
- c. ***The Respondent shall release to the Claimants their Certificates of Service.***
- d. ***Costs to the Claimants.***

Dated and delivered at Mombasa this 25th day of September 2015.

James Rika

Judge