



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 943 OF 2011

MARTIN ONYANGO AROKA.....CLAIMANT

VERSUS

SECURITY GUARDS SERVICES LIMITED.....RESPONDENT

JUDGMENT

1. The claimant herein averred that he was employed by the respondent as a security guard on 1st July, 1991 at a salary of Kshs.570.60 and as at the time of termination he was earning Kshs.17,601. He contended that it was a term of his contract of employment that his services could be terminated by either party giving one month's notice or payment in lieu thereof.

2. On 31st December, 2010 he went to collect his salary from K-rep Bank at Kawangware Branch but found salary had not been deposited to his account. When he came out there was commotion outside the bank by his colleagues which he averred he was not part of. On 5th January, 2001 when he reported to work as usual he was told by the respondent that his services were no longer needed. He later, on the same day went to K-rep Bank and obtained a letter exonerating him from any blame but the respondent ignored the same.

3. The claimant therefore avers that the termination of his services was unfair and his dismissal wrongful and that the Court orders the respondent compensate him.

4. The respondent on the other hand admitted the claimant was its employee but denied his exit salary was Kshs.17,601. The respondent stated that the claimant's salary was Kshs.7,523/= plus a house allowance of Kshs.1,128/=. The respondent denied verbally terminating the claimant's employment as alleged but that the claimant was summoned and interrogated on the incident at K-rep Bank but refused to co-operate with the management and even used insubordinate language contrary to respondent's code of conduct. The respondent further averred that the claimant was not dismissed on account of any blame or wrongdoing at K-rep but on account of the subsequent behaviour.

5. Both parties in their brief evidence in Court repeated the averments in their respective leadings and the Court finds no reason to reproduce them again. Both parties do not dispute the termination of the claimant's services. The only dispute is the reason or reasons for termination of employment. The claimant has averred that his services were terminated as a result of the commotion outside K-Rep Bank which took place on 31st December, 2010. The respondent on the other hand has averred that the

claimant's services were terminated as a result of use of insubordinating language when called for interrogation over the K-Rep incident. The respondent's witness Mr. Ernest Mawinyo testified that when the claimant was called for interrogation, he became rude and used insulting language against his supervisor. He therefore asked the claimant to sign a warning letter and write an apology. The witness however did not say if the claimant refused to do so.

6. Termination of employment and reasons therefore are at the sole discretion of an employer provided they are reasonable in the circumstances. The proper test is usually that would a reasonable employer faced with a similar situation consider dismissal as the best option? The claimant herein was suspected of involvement in rowdiness outside K-Rep Bank. He was however exonerated by the Bank. The respondent called him for interrogation over the incident but claimed he became rude and used insubordinate language. He was asked to sign a warning letter and write an apology. The fact that the respondent considered an apology and signature of a warning letter as an appropriate mitigation of the claimant's conduct meant dismissal was too harsh. In the circumstances it was unreasonable to dismiss the claimant summarily when a warning and an apology could have sufficed.

7. The Court therefore awards the claimant as follows:-

Kshs.

(a) One month's pay in lieu of notice.....	7,523.00
(b) Pay for 4 days worked in January.....	1,003.00
(c) 10 months salary for unfair termination of services.....	<u>75,230.00</u>
	<u>83,756.00</u>

(d) Costs of the suit.

8. It is so ordered.

Dated at Nairobi this 20th day of November 2015

Abuodha J. N.

Judge

Delivered this 20th day of November 2015

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge