



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI
CAUSE NUMBER 1348 OF 2011

BETWEEN

KENYA NATIONAL PRIVATE SECURITY

WORKERS UNION.....CLAIMANT

VERSUS

G4S SECURITY SERVICE [K] LIMITED.....RESPONDENT

Rika J

CC. Mr. Kidemi

Ms. Onyancha Advocate for the Claimant

Ms. Kirimi instructed by Hamilton Harrison & Matthews Advocates for the Respondent

ISSUE IN DISPUTE: UNFAIR AND UNLAWFUL TERMINATION

AWARD

1. The Claimant filed what is titled ‘Claimant’s Submissions’ on 9th August 2011. The ‘Submissions’ were filed on behalf of the Claimant’s Member Stephen Barongo Nyakweba [hereinafter called the Grievant]. The Claimant alleges the Grievant was an employee of the Respondent, a Private Security Firm, employed on 24th April 1989 as a Security Guard. He became a Driver in 2000. On 3rd August 2008, his contract of service was terminated without notice, warning or reason. The Claimant seeks the following orders:-

- The Grievant’s termination be treated as normal termination, and he is paid full terminal benefits, in accordance with the Security Services Order.
- He is paid 12 months’ wages in compensation.
- The Court grants any other benefits deemed fit in the dispute.

2. The Claim was prosecuted by Ms. Onyancha Advocate, although all the pleadings for the Claimant are drawn and filed in person. The final submissions were drawn and filed by the Claimant in person. They bear the signature of Mr. Isaac G.M. Andabwa, who, the Court understands, is the General Secretary of the Claimant. There is no Notice of Appointment or Withdrawal of the Advocate who prosecuted the

Claim. Is the Claimant represented by an Advocate or by its General Secretary, and who is the Court and the Respondent to engage with in resolving the dispute? The line between Parties appearing in person, and Parties represented by Advocates, must be made clear to the Court and all other Parties involved in the dispute.

3. The dispute came to Court through the Labour Relations Act Number 14 of 2007. Rule 6 of the Industrial Court [Procedure] Rules 2010 requires that where conciliation has taken place, the Statement of Claim is accompanied by two documents: one, a report of the conciliator on the conciliation process, supported by the minutes of the conciliation meetings; and two, a certificate of conciliation issued by the conciliator under Section 69 [a] of the Labour Relations Act. Whereas the 'Claimant's Submissions' contain a certificate issued by the conciliator, there is no report, supported by minutes of the conciliation meetings.

4. Rule 4 of the Court Procedure Rules demands that a party who wishes to refer a dispute to the Industrial Court under any written law, shall file a Statement of Claim. There is no provision for institution of any Claim through 'Submissions.' It is only under Rule 26 that a Party may orally submit, or file written submissions summing up its case, upon hearing all the facts and evidence.

5. There were fundamental procedural defects in this Claim that cannot be wished away, or excused under the constitutional principle that Courts should administer justice without undue regard to technicalities. The Claimant disregarded rules of engaging an Advocate; ignored mandatory rules of initiating a Claim at the Industrial Court; and turned a blind eye to the procedure pertaining to Claims filed after conciliation. These serial violations are fatal to the Claim. There was no Claim filed; just Submissions.

6. A casual look at the substantive merits of the Claim leads the Court to conclude that even were the procedural defects minimal and excusable, the Respondent led evidence that amounted to establishment of valid reason or reasons for the termination. The Grievant was clearly entrusted fuel for his Employer's generator; that fuel was lost, and he did not account for it. The Grievant was suspended, investigations carried out, and the Grievant given a chance to defend himself before dismissal. He does not merit compensation. He prays that termination be deemed to be a normal termination, and he is paid all terminal dues. The Claimant did not plead specific terminal dues. The Respondent did not send the Grievant home empty handed; dismissal was reduced to regular termination, and terminal benefits offered. An order commuting summary dismissal to regular termination would be superfluous, the Respondent having given the Grievant this soft- landing without any prompting from the Court. The Grievant is at liberty to collect the terminal benefits offered to him by the Respondent, less any obligation he may owe the Respondent. ***In the opinion of the Court, this Claim has no merit, and fails both on procedural and substantive grounds. Each Party shall meet its own costs.***

Dated and delivered at Nairobi this 21st day of January 2014

James Rika

Judge