



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NAKURU

CAUSE NO. 91 OF 2013

**KENYA NATIONAL PRIVATE SECURITY WORKERS
UNION.....CLAIMANT**

-VERSUS-

**WELL'S FARGO SECURITY
LIMITED.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 28th February, 2014)

JUDGMENT

The claimant filed the statement of claim on 18.04.2013 on behalf of its member Antony Kinywa Macharia (hereinafter, the grievant). The claimant prayed for judgment against the respondent for:

- a. **The grievant to be reinstated to his former employment and be paid his salary for the period he had been out of employment.**
- b. **The salary for April and May 2011.**
- c. **The costs of the dispute.**

The respondent filed the memorandum of response on 09.07.2013 through Otieno Ogola & Company Advocates. The respondent prayed for:

- a. **A finding that the dismissal of the claimant was warranted and lawful.**
- b. **A declaration that the claimant cannot use the honourable court to force an employer-employee relationship where it has completely broken down.**
- c. **A finding that the claimant is not entitled to any of the prayers sought in the memorandum of claim.**

The case was fixed for hearing on 19.9.2013 when the respondent opted not to call any witness. The grievant gave evidence to support his case. The grievant's testimony was as follows:

1. He was employed by the respondent as a guard on 22.01.2007 as per exhibit **WFL 5** on the bundle of the memorandum of response being the service agreement.
2. On 12.04.2011, was the grievant's off duty day. On 13.04.2011, he reported on duty at 9.00 am

and at noon his supervisor informed him that he had been summoned to the branch manager's office. The branch manager informed the grievant that he had been terminated as the grievant was to return the uniform on 14.04.2011. The grievant returned the uniform as scheduled when he was handed the termination letter dated 8.6.2011 showing his termination was effective 14.04.2011. The letter is exhibit **WFL 2** on the memorandum of response. The reason for termination was absconding duty on 13.04.2011.

3. The termination had been verbal then followed by the letter on the following day.

The claimant's submissions were filed on 18.10.2013 and the respondent did not file any submissions.

The only issue for determination is whether the claimant is entitled to the remedy as prayed for.

It is obvious that the respondent did not accord the grievant a notice and a hearing before the termination and as provided for in section 41 of the Employment Act, 2007. To that extent, the termination was unfair. The court has considered the strained relationship between the grievant and the respondent and finds that the order of reinstatement will not be appropriate in the circumstances of the case. To meet the ends of justice, the court is guided by the provisions of section 49 of the Act and finds that the claimant is entitled to the dues as set out in the summary dismissal letter dated 8.6.2011 and 3 months gross salaries at the rate of the last gross monthly salary in view of the unfair dismissal and in lieu of an order of reinstatement. In making the finding, the court has considered the employment record of the claimant that was characterised with valid warnings and the court considers that the claimant is not entitled to the maximum 12 months gross salaries under section 49 of the Act.

In conclusion, judgment is entered for the claimant against the respondent for:

- a. **The respondent to pay the grievant the dues as set out in the summary dismissal letter dated 8.6.2011 and 3 months gross salaries at the rate of the last gross monthly salary, by 1.4.2014, and in default, interest to be payable from the date of the judgment till full payment.**
- b. **The respondent to pay costs of the suit.**

Signed, dated and delivered in court at Nakuru this Friday, 28th February, 2014.

BYRAM ONGAYA

JUDGE