



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI
CAUSE NUMBER 1405 OF 2012

BETWEEN

KENYA NATIONAL PRIVATE SECURITY WORKERS UNION RESPONDENT

VERSUS

TOTAL SECURITY SURVEILLANCE LIMITED.....CLAIMANT

Rika J

CC. Leah Muthaka

Ms. Onyancha Advocate, Mr. Peter Odima, and Mr. Andabwa General Secretary of the Claimant, for the Claimant

Mr. Walala Advocate instructed by Kale Maina & Bundotich Advocates for the Respondent

ISSUE IN DISPUTE: TERMINAL BENEFITS AND CERTIFICATE OF SERVICE

AWARD

1. The Statement of Claim was drawn and filed by Peter Odima. It is indicated this was done so on behalf of the Claimant Union. It is not shown in the Statement of Claim who Peter Odima is in the Claimant Union. The Respondent filed its Statement of Reply on 3rd October 2012. The dispute was heard and closed on 8th July 2013. It was last mentioned on 11th July 2013 when Parties confirmed the filing of their Final Submissions and were advised by the Court Award would be rendered on notice.

2. The Claimant's Final Submissions are drawn and filed by Isaac G. Andabwa, whose designation is not stated. The Court is aware that he is the General Secretary of the Claimant Union. Nonetheless there is an Advocate of the High Court of Kenya Ms. Onyancha, who appeared throughout the hearing for the Claimant Union. The Court has not been able to trace her Notice of Appointment of Advocates in the record, and it was not made clear during the hearing in what capacity she appeared for the Claimant.

3. A Trade Union can appear in Court through its authorized representative, its General Secretary. It may appear through any person appointed in writing by the authorized representative, to perform the functions of the authorized representative. A Trade Union may also appear through an Advocate, either retained as an internal Advocate employed by the Trade Union and on the payroll of the Trade Union, or through an Advocate engaged independently to offer legal representation in Court.

4. The Claimant did not make it clear in what capacity Peter Odima filed the Statement of Claim; what Peter Odima is; whether he had the written authority of the General Secretary; how Ms. Onyancha came on record and ceased representation; and how Mr. Andabwa resumed representation of the Claimant in the presence of Ms. Onyancha. Ordinarily, Ms. Onyancha has appeared before this Court representing the Claimant Union, on the instructions of Wati & Company Advocates. It is difficult in the end to tell who is representing the Grievant Caleb Kombo Angatia. The Court notes there was a recent dispute, ***Cause Number 1384 of 2011 between Kenya National Private Security Workers Union v. G4S Security Service [K] Limited*** in which a similar problem arose revolving around Ms. Onyancha's representation of the Claimant Union. It is important for the Claimant Union and Ms. Onyancha to regularize representation of the Claimant Union's Members in Court, particularly because the Industrial Court is being criticized from different quarters for its historical disregard of legal formalism. ***In view of this, the Court regrettably finds the Claim was improperly brought and prosecuted before it. The Claim is hereby struck out with no order on the costs.***

Dated and delivered at Nairobi this 14th day of February 2014

James Rika

Judge