



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA
CAUSE NO. 1389 OF 2011
(as consolidated with Cause No. 1441 of 2011)

MARISIARI KIBEHERERE 1ST CLAIMANT

SAMUEL KAHUNGUKA 2ND CLAIMANT

VERSUS

ROSE NABIRE MUTURI

T/A NEKIMA SECURITY SERVICES RESPONDENT

JUDGMENT

1. Industrial Cause No. 1389 and 1441 of 2011 were consolidated and matters proceeded together.
2. Claimant in 1389 is Marisiari Kibehere whereas the Claimant in 1441 is Samuel Kahunguka.
3. Both Claimants seek compensation for alleged unlawful and unfair termination of employment and terminal benefits enumerated as follows;

Marisiari Kibehere (1st Claimant) **Cause No. 1398 of 2011.**

- (a) one month's salary in lieu of notice in the sum of Ksh.7,323/=;
- (b) 3 days salary arrears for September 2010 – Ksh.752/=.
- (c) 4 months' salary underpayments from May - August 2010 in the sum of Kshs.12,092/=;
- (d) House allowance for six months in the sum of Kshs.6,770.70/=.

Samuel Kahunguka (2nd Claimant)

- (a) one month salary in lieu of notice in the sum of Kshs.7,323/=;
- (b) 3 days salary arrears in September 2010 – Kshs.752/=;

- (c) 4 months' salary underpayment for May – August 2010; Kshs.12,092/=;
- (d) House allowance for six months Kshs.4,513/=.

Facts of the case.

4. The 1st Claimant was employed by **Mr. George Maya** – T/A **Nekima Security Services** on 1st March 2010 whereas the 2nd Claimant was employed by the same outfit on 10th May 2010.

Both were stationed at Lavington along James Gichuru Road at the premises of the Department of Refugee Affairs.

They both earned a monthly salary of Kshs.4,500/= and were not paid house allowance nor given housing.

5. Both Claimants' employment was terminated on 3rd September 2010. They allege that the termination was wrongful and unlawful. That they were not paid terminal dues upon termination hence the claims made in this suit.

They both state that they had diligently served the Respondent and had no adverse warnings in their files yet the Respondent terminated their services without giving them any reason at all.

They claim compensation for the unlawful and unfair termination.

6. The two state that their salary was below the minimum wage provided at the time in the General wages order and they claim payment of the underpayments for the period worked.

Furthermore, they were not paid for the 3 days worked in the month of September and were terminated without being given any notice or paid in lieu thereof.

7. The Claimants also rely on the General wage order operational at the time to claim housing allowance at 15% of the basic pay they were entitled to.

Finally, the two claim compensation for the unlawful and unfair termination.

8. The matter was reported to the Ministry of Labour and **Mr. P. N. Macharia** investigated the matter and filed a report in Court on 11th March 2013.

The officer found that the two Claimants were employed by the respondent which was a startup or Jua kali business.

That the employment of the two was terminated for no fault of theirs but simply because the respondent had no business at the time because it depended on business from one client only, the Department of Refugee Affairs. The business closed when this contract of business expired and was not renewed.

The officer also found that the employees were entitled to minimum terms and conditions of employment as provided by ***The Regulation of wages (General) Amendment order L N 98 of 2010*** which was applicable at the time.

9. The officer recommended that each of the Claimants be paid as follows;

- (a) 3 days worked in September Kshs.665.40;
- (b) prorata leave Kshs.1,996.20;

(c) underpayments calculated as follows;

$(8,651.45 - 5,500 \times 3 = 12,454.35)$;

10. The Respondent filed statements of Response in respect of both claims in which the employment of the two claimants was admitted but denies the claims made by the two. The Respondent ceased to operate when the contract it had with the Ministry of State for Immigration and Registration of Persons was terminated thus prompting the release of all the employees including the Claimants.

Determination

11. This is a case of redundancy which falls under **Section 40** of the **Employment Act 2007**.

In terms of **Section 40(1)(b) & (f)** the Respondent ought to have paid the Claimants one month's salary in lieu of notice and also notify the area Labour Officer of the intended declaration of redundancy, the number of employees involved and the reasons for the declaration.

The employer failed to notify the employees and the Labour Office and by so doing failed to follow the mandatory procedure provided for by the law. The termination therefore was not in accordance with a fair procedure.

12. This had financial consequences on the Claimants because they had no notice to make alternative arrangements pending the intended separation for that reason. The Court finds that the Claimants are entitled to payment of three months' salary being compensation for the damage suffered due to the failure by the Respondent to comply with the mandatory procedure.

13. Each of the Claimants is to be paid $\text{Kshs.}8,651.45 \times 3 = 25,953/=$ as compensation.

In addition each of the Claimants is to be paid terminal benefits as computed by the Labour Officer and accepted by the Court as the proper computation of the terminal benefits owed to each of the Claimants in the sum of **Kshs.15,175.95**.

In the final analysis the 1st Claimant Marisiari Kibehere is to be paid **Kshs.41,068.95** and the 2nd Claimant is to be paid a similar sum of **Kshs.41,068.95**.

The Award to be paid with interest from the date of this Judgment to payment in full.

The Respondent to pay costs of the suit.

Dated and Delivered at Nairobi this 31st day of July, 2014.

MATHEWS N. NDUMA

PRINCIPAL JUDGE