



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI**

**CAUSE NO. 1426 OF 2013**

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

**VERSUS**

**KENYA KAZI SECURITY SERVICES LIMITED .....RESPONDENT**

**JUDGMENT**

By a Memorandum of claim dated 4<sup>th</sup> September 213 and filed in court on the same day the Claimant alleges unfair termination of its member William Wabwire Mukhwana and seeks the following orders:-

1. 12 months' compensation.
2. Re-instatement
3. Certificate of service
4. Any other orders the court may deem fit
5. Costs of suit.

The Respondent filed a Reply to the Memorandum of Claim on 8<sup>th</sup> October 2013 in which it avers that the summary dismissal of the Claimant was justified and the grievant was paid all his terminal dues. The Respondent further avers that the dispute was unnecessary and prays that the same be dismissed with costs.

At the hearing of the case on 6<sup>th</sup> March 2014 the grievant testified on his behalf while the Respondent called one witness Mr. Frederick Hoya Muyoli, RW1. The parties thereafter filed written submissions. The Claimant was represented by Ms. Onyancha while the Respondent was represented by Mr. Kamau instructed by Waruhiu K'owade & Nganga Advocates.

The grievant testified that he was employed by the Respondent on 1<sup>st</sup> November 2008 as a dog handler after successfully completing their training. On 1<sup>st</sup> September 2011 he was promoted to work as a Kernel attendant at Canine Centre. On 6<sup>th</sup> May 2012 while carrying out his duties at the Canine Centre he removed iron sheets that were used to repair leakages and noticed that his regional manager's exhauster had been left in the open and was being rained on. He removed it to a safe place inside the workshop and continued with his duties. He was later summoned by the dog master to see the Chief dog trainer who accused him of taking a motorbike exhauster. He was then summoned to see the operations manager who issued him with a termination letter. He was never given a chance to defend himself. He was given 7 days to appeal. He appealed but his appeal was not successful. He thereafter reported the case to the Claimant Union who communicated with the Human Resource Department of the Respondent. The Human Resource Department promised to re-instate him but did not do anything. He attended a

conciliation meeting at the Ministry of Labour. He prayed that the law be applied to his case. He denied that he attempted to steal from his employer.

RW1 for the Respondent testified, that he was the grievant's supervisor at KK Canine Centre as a dog master. On 6<sup>th</sup> May 2012 at around 10.30 am when he was going to take tea he saw the grievant putting things in the roof. When he came back he asked the grievant what he was keeping in the roof. The grievant responded that he was keeping the exhaust in the roof to shelter the dogs from being rained on. He testified that the grievant removed the exhaust from a safe place to an unsafe place. The grievant was taken through a disciplinary hearing where the supervisor, two employees and a union representative were in attendance. Under cross-examination he denied ever disagreeing with the grievant at work.

I have read the pleadings, considered the evidence adduced in court and the written submissions.

The issues for determination are whether the grievant was unfairly dismissed from employment and whether he is entitled to prayers sought.

The Respondent submits the grievant was given a hearing. RW1 testified that he was one of the witnesses. However the Respondent has not explained what kind of disciplinary process it was. The Claimant stated that RW1 summoned him to see the operations Manager. He testified that he was not given a hearing .

It is not clear from the evidence whether the hearing was held on the same day that is 6<sup>th</sup> May 2012 or on a later date. It was not stated that the Claimant was informed of the charges against him in the presence of a union official or a fellow employee as provided for in **Section 41 of the Employment Act**. No record of the disciplinary hearing have been produced. No mention was made of the specific charges preferred against the Claimant. The letter of termination does not refer to any disciplinary hearing having been held before the Claimant was terminated. The section under which the Claimant was terminated is **44(4) (c) of Employment Act** is on account of negligence. The reasons given in the letter that the Claimant was found to have moved a motor bike exhaust that was at Canine Centre and taken it and that it was later found does not disclose negligence.

RW1 testified that the Claimant wanted to take advantage of the fact that it was a Sunday and not many people were at work so he wanted to remove the exhaust from the compound. This would mean that the Claimant attempted to steal the exhaust.

It is therefore not clear whether, if there was disciplinary hearing, the Claimant was defending himself against attempted theft or negligence.

The Claimant's employment was terminated without notice 5 days after the incident over which he was terminated.

From the foregoing I find that there is no proof that the Claimant was ever given a hearing in terms of **Section 41 of the Employment Act** and if there was any hearing at all, then it was not a fair hearing as the Claimant did not know the charges he was defending himself against.

### **Is the Claimant entitled to his prayers?**

The Claimant prayed for 12 months' salary, re-instatement, certificate of service and costs. However in the written submission there is no mention of re-instatement. The only prayers in the submissions are compensation and certificate of service.

Having found that the Claimant was unfairly terminated he is entitled to compensation as provided under **Section 49 (1) (c) of Employment Act**.

The Claimant had worked for about 4 years. Taking into account the length of service and the circumstances under which the Claimant was terminated, it is my opinion that 6 months compensation is

reasonable.

According to the Claimant's payslip for September 2011, his basic salary was Shs.9,210 with a house allowance of Shs.1,382/- uniform allowance of Shs.80/- and responsibility allowance of Shs.2000 making a gross salary of 12,672/. I will use this amount for purposes of calculation of his terminal benefits.

Six months compensation is therefore Kshs.76,032 which I award the Claimant.

The Respondent is also directed to issue the Claimant with a certificate of service within 15 days from the date of judgment.

Order accordingly.

Dated and delivered at Nairobi this 7<sup>th</sup> Day of July 2014

**HON. LADY JUSTICE MAUREEN ONYANGO**

**JUDGE**

In the presence of:

William Wabwire Grievant

No appearance for Respondent