



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI

CAUSE NO 569 OF 2010

(Before: D.K.N. Marete)

AZULU WASUA ADEBACLAIMANT

versus

INTER SECURITY SERVICES LIMITED.....RESPONDENT

JUDGEMENT

By a Memorandum of Claim dated the 20th May, 2010 and filed on 24th instant this matter came to court. It does not expressly disclose an issue in dispute.

The respondent vide a Reply to Memorandum of Claim dated 24th March, 2011 and filed thereafter denies the claim and prays that the same be dismissed with costs.

The claimant's case is that at all material times to this suit and particularly between February, 2003 to 22nd February, 2007, he was employed by the respondent as a security guard at a monthly salary of Ksh.8,261.00 On or about 22nd October, 2007, the respondent terminated the claimant's employment on grounds that were fabricated, false and malicious and intended to justify the termination.

The claimant further contends that prior to his dismissal, the respondent summoned him to his office severally and did not assign him duties/responsibilities and his efforts to establish his employment position fell on deaf ears. The respondent despite termination also failed to meet and pay his terminal benefits as hereunder;

- i. *One month's salary in lieu of notice* - *Ksh.8,261.00/=*
 - ii. *Statutory service payable for each completed year of Service calculated at 18 days salary for every completed*
year of service being 18/30 x8,261 x 4 years - *Ksh.19,826.40/=*
 - iii. *Payment in lieu of untaken and unpaid leave for 3 years being 2005, 2006, 2007 (3x8,261/=)*
- *Ksh.24,783/=*
 - iv. *Compensation for unlawful/wrongful and unfair termination of employment calculated at twelve*
months salary being 12 x 8,261/= - *Ksh.99,132.00*
- Total claim - Kshs.152,002.40/=**

This is also despite demand and notice to sue over the same. He prays as follows;

i. *An order compelling the Respondent to pay to the Claimant his terminal*

*dues totaling to **Ksh.152,002.40/=** in lumpsum as owing to the Claimant.*

ii. *In default of payment of the sum of **Kshs.152,002.40/=** by the*

Respondent to the Claimant in full, interest from the date of default until full payment will be owing to the claimant.

iii. *Costs of this case.*

The respondent denies the claim save for the fact that he had employed the claimant. He further avers that the claimant was summarily dismissed on grounds of insubordination whereby he repeatedly refused to heed instructions from his deployment officer and using abusive language against the said deployment officer. This was communicated to him in the letter of summary dismissal dated 22nd October, 2007 – see Appendix of the claimant’s memorandum of claim.

The respondent also submits that the respondent had instituted **PMCC No. 6168 of 2008 – Azulu Waswa Adebaba Vs Inter Security Services Limited** at the Milimani Commercial Courts.

The matter came for mention and hearing severally until the 29th August, 2011 when it was heard. CW1 – Azulu Adebaba – the claimant testified in support of the claim. He posited that he was employed in February, 2003 and dismissed on 22nd October, 2007 as a security guard – staff No. 10552 at a salary of Ksh.8,920/=. His last deployment was at Ray Golf Club.

The claimant further testified that he never received any communication from his employer. The supervisor had the responsibility of transfer and in this case he was not told where he was being deployed. He was subsequently issued with a letter of summary dismissal. He had not had previous disciplinary issues. He therefore wrote to the union and requested for an explanation. He was not paid his final dues amounting to Ksh.10,527/= and asks for payment of all his dues and costs.

On 6th June, 2013, the claimant on cross-examination testified that he now worked with Fidelity as a driver and had done four years in this employment. He further testified that he had been employed by the respondent but was terminated on 4th October, 2007. He wrote to the respondent on 25th October, 2007 he was told to wait but did not get an answer. The union sought a meeting with the Director on 30th October, 2007 at 10.30 hours but was only able to secure a meeting with the Human Resource Officer who was hard and no settlement ensued. The union demanded a termination letter and this was received on 20th November, 2007, but backdated to 20th October, 2010. He also informed the union that he had not been deployed 4th October, 2010 and 24th October, 2010. He was paid for four (4) days in October, 2010, the dismissal having come on 4th October, 2010.

DW1 – Simon Odhiambo Oluoch testified that he worked with the respondent. That the claimant is not known to him but was an employee of the respondent and was dismissed on 22nd October, 2007. This was a summary dismissal on grounds of indiscipline. He had been warned but did not heed those warnings and also had been abusive and would not take instructions from his supervisors. The authentic date of the letter of dismissal is 22nd October, 2011 and that the alteration is not official.

On cross-examination, the witness testified that the respondent issues written warnings with a copy to employees. He would not confirm that he (claimant) was served with a written warning. Annexure 5 is not known to the witness but is an inquiry on deployment. He testified that he was not able to confirm whether the claimant was given a chance to defend himself and that the letter of inquiry on deployment was done after dismissal.

The issues for determination therefore are:-

1. Was the termination of the claimant's employment unlawful, unfair and wrongful?
2. Is the claimant entitled to the relief sought?
3. Who bears the costs of this cause?

The 1st issue for determination is whether the claimant's termination of employment was wrongful, unfair and unlawful. It is not in dispute that the claimant was terminated vide a letter of summary dismissal dated 22nd October, 2007 which was served unto the claimant – see annexure 4 of the claim. The letter is explicit on the factors leading to dismissal.

The claimant in his written submissions states that the respondent declined to assign him duties and therefore he did a letter of inquiry on this. The union also intervened with a view to resolving the issue but the respondent would not yield and ultimately issued a dismissal letter to the claimant. There was therefore no evidence of insubordination and the grounds of dismissal therefore an excuse. The respondent should have been able to adduce evidence of misconduct, insubordination and indiscipline on the part of the claimant. He did not.

The claimant further submits that the dismissal is lacking in substantive and procedural fairness in that;

- No charges or notices were issued to the claimant for answer or response
- No hearing or representation of the claimant employees was made in relation to the claimant's employment
- No verdict on the same was had

The process was therefore flawed, unlawful and unfair and should not stand. I therefore agree with the claimant and hold that the termination of his employment services was unfair, wrongful and unlawful.

The 2nd and other issue for determination is whether the claimant is entitled to the relief sought. He is and I order the following in compensation thereof;

- | | | |
|--|---|--------------------------------|
| i. <i>One month's salary in lieu of notice</i> | - | Ksh.8,261.00/= |
| ii. <i>Statutory service payable for each completed year of service calculated at 18 days salary for every completed</i> | | |
| <i>year of service being 18/30 x 8,261 x4</i> | - | Ksh.19,826.40/= |
| iii. <i>Payment in lieu of untaken and unpaid leave for 3 years being 2005, 2006, 2007 (3x 8,261/=)</i> | | |
| | - | Ksh.24,783.00/= |
| iv. <i>Compensation for unlawful/wrongful and unfair termination of employment calculated at twelve</i> | | |
| <i>months salary being 12 x 8,261/=</i> | - | <u>Ksh.99,132.00/=</u> |
| Total Claim | - | <u>Ksh.152,002.40/=</u> |

In the circumstances, the costs of this cause fall onto the respondent and this clears the last issue for determination.

This court therefore in the penultimate orders compensation to the claimant on the following terms;

- | | | |
|---|---|-----------------|
| 1. i. <i>One month's salary in lieu of notice</i> | - | Ksh.8,261.00/= |
| ii. <i>Statutory service payable for each completed year of service calculated at 18 days salary for every completed year of service being 18/30 x 8,261 x4</i> | | |
| | - | Ksh.19,826.40/= |

iii. *Payment in lieu of untaken and unpaid leave for 3 years being 2005, 2006, 2007 (3x 8,261/=) - Ksh.24,783.00/=*

iv. *Compensation for unlawful/wrongful and unfair termination of employment calculated at twelve months salary being 12 x 8,261/=* -----
Ksh.99,132.00/=

	Total	Claim
	<u>Ksh.152,002.40/=</u>	

2. The costs of this cause shall be borne by the respondent.

Dated, delivered and signed the 3rd day of October, 2013.

D.K.Njagi Marete

JUDGE

Appearances:

1. Mr. Makokha instructed by Namada & Company Advocates for the claimant.
2. Mr. Kibera instructed by Kibera & Maina & Advocates for the respondent.