



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 1245 of 2011

PATRICK MWENDO MUTUI..... APPLICANT

VS

SECUREX AGENCIES (K) LTD RESPONDENT

JUDGMENT

The Claimant herein Patrick Mwendo Mutui has sued the Respondent herein Securex Agencies (K) Ltd seeking orders for payment of his salary Ksh.27,500/= being salary for May, 2011, payment of 12 months' salary for unlawful and unfair termination, one month's salary in lieu of notice and payment of his benefits under the Protective Security Services Order.

The Claimant filed his Memorandum of claim dated 19th July, 2011 on the 26th June 2011, through the firm of B.M. Musyoki & Company Advocates. The Claimant further gave evidence before court. He stated that he is a Security Controller at Semco Holdings. He told court that he was employed by the Respondent on 27th July, 2009 as a Radio Controller at a monthly gross salary of 17,000/=. He performed his duties faithfully and without any incidences of indiscipline which saw his salary increased to 27,500/=. However on 31st May, 2011, while on duty he was suspended by the Respondent for a period of 7 days. At the expiry of the suspension he reported on duty on 6th June 2011 but he was again suspended for five days with instructions to report back on 10th June 2011. When he reported on 10th June 2011, the Respondent asked him to accept to be demoted and work as a guard a position he had not been trained for. He says he was also not medically fit for this work. He asked the respondent to reconsider its decision. All this period, the respondent had not paid the claimant salary for May, 2011. On 16th June, 2011 the claimant could wait no longer and due to uncertainty of his position, he demanded to be informed of the Respondent's decision. This demand resulted in instant dismissal without any pay or benefits. This is what prompted the claimant to file this suit.

In cross examination by Counsel for Respondent, the claimant told court that he served the Company for 1 year 2 months. He says he attended meeting on 10th June 2011 after the first suspension and in this meeting Patrick Macharia was absent and so was one Japheth Oloo. He says that his role as an employee was to man the control room and respond to clients'. He says that prior to this, he never met anyone in a restaurant along Tom Mboya Street. He denies meeting anyone called Brown Chege. He denies that anyone ever hinted to him that he needed to co-operate with them to commit crimes in Industrial Area. The Respondent's Human Resource Manager informed him that he had been involved in several crimes. He denies that he was informed that his phone was found to have communicated with a criminal wanted by police. In relation to some Minutes of a purported disciplinary meeting held on 10th June 2011, the claimant told court that he had never seen them before and the issues raised were not true. He says he refused to take up a junior post. He says Japheth Oloo was his junior controller and denies that Japheth told him of an incident where there were criminal gangs who wanted him to participate in. He says the

Company wanted him to take up guard duties but he refused as he is asthmatic and showed them inhalers. He says he did not collect his cheque for May as his salary used to be paid in his account.

The respondents on the other hand filed their memorandum of reply dated 8th August, 2011 on 18th August, 2011 through the firm of Rachier & Amolo Advocates. They also called three witnesses who gave evidence and indicated that the claimant was an employee of the Respondent but they decided to remove him from control room because of a problem of integrity after he was implicated in a case of dealing with criminals. The RW 1 told court that a Disciplinary Committee meeting held with the claimant and he told them that two people Brown Chege and Japheth Oloo had approached him for collusion with them and he refused. That claimant refused to divulge more information claiming that his life was in danger. The Respondent avers that following investigations into these allegations the Respondent made a finding implicating the claimant to criminal activities against its clients in cahoots with criminal gangs. That the Respondent was entitled under the law to summarily dismiss the claimant. Copies of the minutes of the Disciplinary Committee were produced in court as Exh SAL 1. RW 1 in cross examination told court that there were other duties claimant would have done. That claimant deserted duty according to their records. She says they used to pay him by bank transfers. She says the Minutes of the meeting held were taken by her Assistant Moses but were not signed. The attendance sheet is also on another sheet. She stated that the report of the CID was not produced in court is it a classified document. Of the other three workers who had been implicated, RW 1 told court that one resigned four months later and the other refused to take up guard duties.

Having heard the evidence adduced in court by both parties and having considered submissions filed by the claimant, issues for determination by this court are:

1. Whether the dismissal of the claimant by Respondent was unlawful.
2. What remedies if any are available to the claimant.

On the first question, it is apparent that the Claimant was an employee of the Respondent having been employed as a Radio Controller vide his appointment letter dated 27th July, 2009. The Respondent have alleged that they had information that the claimant was involved in criminal activities. The Respondents indicated that they had kept an occurrence Book to prove these facts. When asked about these records, the Respondent indicated that the information is classified. However, this is a court of law which is entitled to the benefit of all information available in order to reach a fair and just decision. If the Respondent felt that the information was classified, they should have approached the court and sought court's leave to give the information is camera. This respondent failed to do.

In any case, the Respondent said this information was from the police. It would have been prudent to call the said police as a witness. They failed to do so and so what the Respondents alleged against the claimant remains mere suspicion.

The Respondents also alleged that the claimant deserted duty. However, given the chronology of events it is apparent that there was no desertion. The Respondent have indicated to court that they offered claimant a guard job instead of what he was employed to do. The claimant opted not to. This would have been a demotion. If the Respondent felt that they no longer needed the services of claimant as an Alarms Controller, they should have resorted to the employment contract which has an exit clause. With 1 month notice or pay in lieu of notice. The Respondent did not exercise this option. The upshot is that the termination of the claimant by the Respondent was unfair and unlawful.

What remedies is the claimant entitled to? I will resort to the Employment Act, 2007 which gives remedies for such action. I enter judgment for claimant and order that the Respondent pays the claimant as follows:

1. May, 2011 salary - Ksh.27,500/=
2. 1 month's salary in lieu of notice - Ksh.27,500/=

3. 6 months salary compensation for

unlawful termination = 27500 x 6 - Ksh.165,000/=

TOTAL - Ksh.220,000/=

4. The Respondent to issue claimant with certificate of service

5. The Respondent to meet costs of this suit.

Dated, signed and delivered this 21st day of November, 2012.

HELLEN WASILWA

JUDGE

Appearances:

B.M. Musyoki & Company Advocates for Claimant

Rachier & amolo Advocates for Respondent

Rachel Gichuki Court Clerk