



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI
CAUSE NUMBER 759 OF 2013

BETWEEN

MEBO AMBOGO LUNDU.....
CLAIMANT

VERSUS

MOSES NDERITU.....
RESPONDENT

Rika J

CC. Mr. Kidemi

Mr. Mebo Claimant in person

Respondent absent

ISSUE IN DISPUTE: UNFAIR AND UNLAWFUL TERMINATION

AWARD

1. The Claimant filed her Statement of Claim on 25th May 2013. The Respondent did not enter an Appearance, file any Response, or attend Court during the hearing on 15th January 2014.
2. The Claimant testified she was employed by the Respondent as a Loader and Domestic Servant, around August 2002. She served the Respondent faithfully until April 2012, when the Respondent terminated her contract of employment without notice, warning or reason. She seeks:-
 - (a) One month salary in lieu of notice at Kshs.9,500/=.
 - (b) Severance pay at 15 days' salary for every year completed in service.
 - (c) Annual leave entitlement at Kshs.52,250/=
 - (d) House Allowance at Kshs.15,675.

In the absence of any evidence or challenge from the Respondent, the Court Finds and Awards:-

3. The Claimant was employed by the Respondent as a Loader-cum-Domestic Servant in 2002. Her contract was terminated in April 2012 – after 10 years of service.
4. She was an employee of the Respondent within the meaning of the term ‘employee’ given under Section 2 of the Employment Act. A ‘domestic worker’ has been defined under the International Labour Organization Domestic Workers Convention 2011 (No. 189), as “any person engaged in domestic work within an employment relationship.”
5. “Domestic Work” under the Convention is any work performed in, or for a household, while the employer of a domestic worker may be a member of the household for which the work is performed, or an agency or enterprise that employs domestic workers and makes them available to households.
6. The Convention, sets minimum standards for domestic workers such as the promotion and protection of the human rights of all domestic workers; respect and protection of fundamental principles and rights at work, such as freedom of association and the right to collective bargaining; fair terms of employment; protection against abuse; minimum wages and protection of wages; equal treatment with other workers with respect to hours of work; and access to social security protection, including maternity benefits.
7. These minimum standards are already incorporated in our Constitution as part of the Bill of Rights, under Article 41 on Labour Relations. The Employment Act 2007 similarly applies to the Domestic Workers, and even without the ratification by Kenya of ILO Convention 189, the minimum labour standards defined under the Convention are already part of the Law of Kenya. Ratification only serves to clarify and expand the existing minimum Standards on the rights of Domestic Workers.
8. It is clear Mr. Nderitu engaged Ms. Lundu as his Domestic Worker and Loader, and terminated the employment relationship without regard to the law governing that relationship. He was not concerned about substantive justification or fairness of procedure in the termination; did not care about her accrued benefits borne of her 10 years of toil; he ignored her right to social security; and chose to let the Claimant leave as she had entered the relationship: un-recognized. She was never availed any letter of employment or termination, or her certificate of service. She was completely un-recognized.

IT IS ORDERED:-

- 1. Termination of the Claimant’s contract of employment was unfair.**
- 2. The Respondent shall pay to the Claimant 6 months’ salary in compensation at kshs.57,000; and**
 - **One month salary in lieu of notice at Kshs.9,500;**
 - **Service pay at 15 days’ salary for each completed year of service at 54,807;**
 - **The total sum of Kshs.121,307 shall be paid by the Respondent to the Claimant within 30 days of the delivery of this Award.**
- 3. The other claims were not given adequate support in evidence and are rejected.**
- 4. The Respondent shall avail to the Claimant her Certificate of Service forthwith.**

Dated and delivered at Nairobi this 24th day of January 2014

James Rika

Judge