



REPUBLIC OF KENYA



**Obwanda v Consultancy (Employment and Labour Relations Cause
281 of 2021) [2023] KEMC 310 (KLR) (8 August 2023) (Judgment)**

Neutral citation: [2023] KEMC 310 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
EMPLOYMENT AND LABOUR RELATIONS CAUSE 281 OF 2021**

PA NDEGE, SPM

AUGUST 8, 2023

BETWEEN

ALICE ACHIENG OBWANDA CLAIMANT

AND

NALIS CONSULTANCY RESPONDENT

JUDGMENT

1. The claimant, Alice Achieng Obwanda, instituted this suit by filing a memorandum of claim dated 16th September 2021. The claimant herein avers that she was unfairly dismissed from employment by the respondent. The claimant was employed by the respondent on terms of a written contract as an administrator officer. She was payed a basic salary of 33,000, but without house allowance. She was reporting to work from 8.00am to 5.00pm daily. She was payed in instalments till the time of contract termination on 28th May 2020. She had however served the respondent for five months without any misconduct. She has not received pending dues to date.

2. The claimant herein prayed that judgement be entered against the respondent as follows:

One-month salary lieu notice Kshs 37,950.00

House allowance for 24 months Kshs 118,800.00

Unpaid salary 1 month and April balance Kshs 44,000.00

Underpayment for 2 years Kshs 422,400.00

Breach of contract Kshs 627,000.00

Gratuity for 2 years Kshs 16,800.00

Compensation section 49(1)c Kshs 455,400.00

Grand total Kshs 1,722,350.00



3. The respondent, Nalis Consultancy, has not filed any response to the memorandum of claim even after being served with the summons. This matter therefore proceeded for hearing ex-parte. During the formal proof herein, the Claimant produced her statement dated 16th September 2021 as well as list of documents in support of her case.
4. The following documents were produced and admitted with consent of the court.
 - Exhibit 1 claimants statement
 - Exhibit 2 demand notice
 - Exhibit 3 copy of employment contract
 - Exhibit 4 WhatsApp extract
5. The legal burden rests on the respondent herein, who is the employer to prove or justify the reasons for termination, and where the employer fails to do so the reasons shall be deemed to have been unfair within the meaning of sec 45 of *employment act*. Justice Linnet Ndolo in Rashid Jeneby v Prime Bank Limited (2015) eKLR stated that the burden placed on the employer is to demonstrate, on a balance of probability, the existence of a valid reason to terminate the employment.
6. The statutory burden upon a person complaining of unfair termination of employment or wrongful dismissal is stipulated in section 47 (5) of *employment act* which provides that for any complaint of unfair termination of employment or wrongful dismissal the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer.
7. Further section 49 (4)(l) of the *employment act* requires that an employee mitigates the loss of termination. The claimant has through her unchallenged evidence herein demonstrated that her termination was not done in accordance with section 41 of the *Employment Act* and other enabling laws. She is therefore entitled to compensation as claimed.
8. The claimant has further demonstrated that she was not served with any notice of termination or paid in lieu. This serves as a breach of contract whereby it was clearly stated in the employment contract that a one-month notice ought to be served in the event of termination.
9. Sec 31 of the *employment act* stipulates that an employer shall at all times, at his own expense, provide reasonable housing accommodation for each of his employees either at or near to the place of employment, or shall pay to the employee such sufficient sum, as rent, in addition to the wages or salary of the employee, as will enable the employee to obtain reasonable accommodation. The claimant herein was not provided with any housing accommodation or allowance which she was entitled to.
10. The claimant testified that she was not paid full salary in April as the respondent only sent 11,000 and that Salary for the month of May was wholly unpaid being the month that the employment was terminated. This serves as a violation and infringement of the rights of an employee. The claimant is therefore entitled to her unpaid dues.
11. Judgment is hereby entered against the Respondent as follows: -
 - One-month salary lieu notice Kshs 37,950.00
 - House allowance for 24 months Kshs 118,800.00
 - Unpaid salary 1 month and April balance Kshs 44,000.00



Underpayment for 2 years Kshs 422,400.00

Breach of contract Kshs 627,000.00

Gratuity for 2 years Kshs 16,800.00

Compensation section 49(1)c Kshs 455,400.00

Grand total Kshs 1,722,350.00

12. Costs be and is hereby awarded to the claimant

It is so ordered

DATED, SIGNED AND DELIVERED AT NAKURU THIS 08th DAY OF AUGUST 2023.

HON A.P. NDEGE

SENIOR PRINCIPAL MAGISTRATE

