

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NO. E147 OF 2022

KALTHUMI MOHAMED ALI.....
CLAIMANT

VERSUS

DR. NATHAN M. MURUGU.....1ST
RESPONDENT

SIMS WOMEN HEALTH SERVICES LIMITED.....2ND
RESPONDENT

JUDGMENT

Introduction

1. Before the Court is the Claimant's Amended Memorandum of Claim dated 16th June, 2022. Under the claim, the Claimant seeks the following reliefs as against the Respondents: -

- i. One month's salary in lieu of notice
- ii. Compensation for unfair termination
- iii. Unpaid leave
- iv. House allowance
- v. Unpaid statutory deductions
- vi. Unpaid extra hours
- vii. Service pay for 29 years
- viii. Damages for breach of legitimate expectation

- ix. Letter of service
2. The Respondents filed an Amended Response to the claim dated 6th October, 2022, wherein, they deny the Claimant's claim.
 3. The case proceeded for hearing on 26th March, 2025. The Claimant testified in support of her case, adopted her witness statement, and produced documents filed as her exhibits in the matter.
 4. On the same date, the Respondents' Advocates indicated that his client was in bad health and would not be testifying in the matter, and proceeded to close the Respondents' case.
 5. Submissions were filed for both parties, which have been duly considered.

The Claimant's Case

6. The Claimant states that she was employed by the Respondents since 1992 as a front desk secretary and administrator. It is her case that the 1st Respondent originally operated as a sole proprietor, and later incorporated the 2nd Respondent, and that the Claimant was absorbed into the new entity.
7. It is her case that she served the Respondents diligently for over 30 years until 15th December 2021, when her employment was abruptly and unlawfully terminated

without notice. She avers that at the time of termination, she received no prior notification as required under Section 45(2) of the Employment Act, nor was she paid any of her dues, benefits, or given a certificate of service.

8. It is her case that at her termination, she was earning a basic salary of Kshs.30,000. She states that she consistently performed her duties diligently throughout her employment until November 2021, when she was verbally informed of her dismissal without any prior notice.
9. The Claimant states that despite her long and dedicated service, she was never granted terminal benefits, lawful wage increments, or any emoluments due to her. She avers further that after her termination, neither the 1st nor the 2nd Respondent issued her with a certificate of service.
10. The Claimant asserts that the Respondents intentionally terminated her employment without any valid or substantive reason. She states that the termination was unlawful and unfair, and in breach of Section 43 of the Employment Act, which requires employers to justify the reasons for dismissal.
11. It is her case that despite her long, dedicated service and willingness to work beyond normal hours, the Respondents acted arbitrarily and ended her employment without due process, including the absence of any disciplinary hearing or consultation.

12. The Claimant prays that the court grants her remedies against both Respondents, first against the 1st Respondent for the period he employed her as a sole proprietor, and against the 2nd Respondent for the period after its incorporation, clarifying that she is not attempting to pierce the corporate veil.
13. The Claimant further avers that the Respondents treated her disrespectfully and that their actions have caused her severe financial hardship, leaving her unable to pay bills, support her family, or meet obligations as the sole breadwinner. It is her case that she has fallen into debt and now relies on relatives, friends, and well-wishers for survival, while the Respondents continue operating and generating revenue.
14. The Claimant argues that the Respondents' actions were unlawful and violated the International Labour Organization (ILO) conventions, the Employment Act of 2007, and the Constitution of Kenya. She submits that the Respondents blatantly disregarded labour laws and fair labour practices.
15. The Claimant further maintains that her termination was wrongful because it lacked any substantive justification.
16. On cross-examination, the Claimant confirmed that the 1st Respondent has always used the 2nd Respondent's company as his trade name. She further clarified that she was terminated in November 2021.

17. The Claimant further confirmed on cross-examination that she was always paid a salary by the 2nd Respondent, and that the payment voucher she produced in evidence is in the name of the 2nd Respondent.
18. It is her further evidence that her salary at termination was Kshs.35,000/- . She further states that the 1st Respondent closed the 2nd Respondent's business and re-opened in a different name, and further instructed her to close the business premises, and does not know whether the business ever re-opened.
19. The Claimant prays that the court allow her claim and award her the reliefs sought.

The Respondent's Case

20. The 1st Respondent states that he indeed incorporated the 2nd Respondent and maintains that the Claimant sought employment directly with the 2nd Respondent under new terms as is required by law.
21. It is his case that the Claimant was never his personal employee, asserting instead that she was employed by Sims Women's Health Services Limited, the 2nd Respondent herein, a duly registered limited liability company, and as such, he could not have personally terminated the Claimant's employment.

22.The 1st Respondents further states that the 2nd Respondent ceased operations around June/July of 2021 due to the impact of COVID-19, and his prolonged illness, which made him unable to perform his duties for several years.

23.The 1st Respondent further argues that, if the Claimant had ever been his employee, which he denies, any termination would have occurred in 2006 when she joined the 2nd Respondent, making any such claim time barred under the Limitation of Actions Act. It is the Respondents' case that no service certificate was ever requested or denied, as issuing such a certificate is a legal obligation.

24.The 2nd Respondent confirms that it ceased operations in June 2021, contrary to the Claimant's assertions. It reiterates that it shut down due to the 1st Respondent's chronic illness and the nationwide economic impact of the COVID-19 pandemic.

25.It is their position that the Claimant is not entitled to any of the reliefs sought in the Claim for the reasons already stated or at all.

Analysis and Determination

26.I have considered the pleadings, the evidence adduced, and the rival submissions. The following issues arise for determination:

- i. Whether the Claimant was an employee of the Respondents

- ii. Whether the Claimant was unfairly terminated.
- iii. Whether the Claimant is entitled to the remedies sought.

Whether the Claimant was an employee of the Respondents

27. The Claimant contends that she was in the employ of the Respondents from the year 1992, having initially been employed by the 1st Respondent when he operated as a sole proprietor. It is her further assertion that she was later transferred to the employment of the 2nd Respondent after its incorporation by the 1st Respondent, who used the company as his trade name.

28. On its part, the 1st Respondents deny that the Claimant was ever his employee, and maintains that she was employed by the 2nd Respondent's company.

29. During cross-examination, the Claimant confirmed that her salary was always paid by the 2nd Respondent, and that payment vouchers produced in evidence were in the name of the 2nd Respondent.

30. The court record bears no documentary evidence of an employer/employee relationship between the Claimant and the 1st Respondent. Further, the Claimant admitted that the 1st Respondent used the 2nd Respondent as his trade name, but which assertion does not, in law, make the director personally liable for the wrongs of the company.

31. A company is, by law, a distinct legal entity separate from its shareholders and directors (*See Salomon v Salomon & Co Ltd (1897)*).

The court further notes that the Claimant expressly stated that she was not in any way attempting to pierce the corporate veil.

32. In the premise, I find and hold that the Claimant was an employee of the 2nd Respondent, and not the 1st Respondent, and the Claimant's claims against the 1st Respondent personally, therefore fail.

Whether the Claimant was unfairly terminated

33. On whether the Claimant was unfairly terminated from the service of the 2nd Respondent, she maintains that she was abruptly terminated in November 2021, without notice, reason, or a hearing, while the Respondents assert that the 2nd Respondent closed shop in June/July 2021, hence the Claimant could not have been terminated in November 2021.

34. The Respondents did not call any witnesses, and did not produce any records to prove closing shop in June 2021, as required under Section 74(1) of the Employment Act. Further, the Claimant testified that she was instructed to close the premises herself, implying she was still working until late 2021.

35. Sections 41, 43, and 45 of the Employment Act, 2007, require that an employer prove the reasons for termination, prove that the reasons are valid, fair, and justified, and finally show that it adhered to the tenets of fair process. (See **Walter Ogal Anuro v Teachers Service Commission (2013) eKLR**).

36. Evidently, the Respondent led no proof of closure in June 2021. It further did not issue any notice to the Claimant on the impending termination, nor did it accord the Claimant an opportunity to be heard in the form of a disciplinary process.

37. Further, although the Respondents insist that the reason for the termination of the Claimant's employment were the impact of COVID-19 and the 1st Respondent's illness, no effort was made to prove these grounds as required under the law. In **Pius Machafu Isindu v Lavington Security Guards (2017) eKLR**, the court held that an employer must justify a termination, and failure renders the termination unfair.

38. The Claimant's testimony therefore stands uncontroverted, and on this basis, this Court finds and holds that the Claimant was unfairly and unlawfully terminated.

Whether the Claimant is entitled to the remedies sought

39. Under the amended Memorandum of Claim, the Claimant sought to be awarded one month's salary in lieu of notice, compensation for unfair termination, unpaid leave, house allowance, unpaid statutory deductions, unpaid extra hours,

service pay for 29 years, damages for breach of legitimate expectation, and a letter of service.

One Month Salary in lieu of notice

40. The Claimant's claim herein is not contested. Notice or pay in lieu thereof is a statutory requirement under Sections 35 and 36 of the Employment Act. The claim is merited and is allowed.

Compensation for Unfair Termination

41. Having found the termination of the Claimant's employment unfair, she is no doubt entitled to compensation in accordance with Section 49 and 50 of the Employment Act.

42. Taking into account her long service with the 2nd Respondent (29 years), her abrupt termination, and the fact that no justification was offered for the termination, I deem an award of 8 months' salary sufficient compensation for the unfair termination, and which is hereby granted.

Unpaid Leave

43. It is by law the employer's obligation to produce leave records. In this matter, no records were produced.

44. The claim is thus similarly uncontroverted, but for the reason that leave cannot be accrued indefinitely, and further owing to the limitation period under Section 89, the Claimant is awarded payment on account of accrued leave for one year.

House Allowance

45. Under Section 31, house allowance is awarded where it is proved that the salary was not consolidated. The Claimant did not lead evidence to show that the salary she was paid was not consolidated. This claim, therefore, fails for lack of such proof.

Unpaid Statutory Deductions

46. The Claimant did not prove non-remittance of statutory deductions by the 2nd Respondent, and the Claim is dismissed.

Unpaid Extra Hours

47. Overtime claims must be strictly proved (***See Joseph Mburu v Target Security (2017)***). The Claimant led not evidence to show that she worked overtime. No time sheets or records were provided, hence the claim is not merited.

Service Pay for 29 Years

48. Under Section 35(6), service pay is not payable where NSSF contributions were made. The Claimant did not prove that the Respondent failed to remit NSSF and this claim therefore fails.

Damages for Breach of Legitimate Expectation

49. The Claimant has not shown why she is entitled to damages for breach of legitimate expectation.

Certificate of Service

50. Issuance of a certificate of service is mandatory under Section 51 of the Employment Act. The Respondent must issue it within 14 days of this judgment.

51. In whole, the Claimant's claim succeeds in terms of the following orders: -

- a) That the 2nd Respondent shall pay the Claimant 8 months' salary as compensation for the unfair termination at Kshs.280,000/-
- b) One month's salary in lieu of notice at Kshs.35,000
- c) payment for 21 days unpaid leave days at Kshs.35,000/-
- d) That the Claimant be issued a certificate of service within 14 days of this judgment
- e) costs shall be borne by the 2nd Respondent.

52. Judgment accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 11TH DAY OF DECEMBER, 2025.

**C. N. BAARI
JUDGE**

Appearance:

Mr. Mailur h/b for Mr. Hassan for the Claimant

N/A for the Respondent

Ms. Esther S - C/A