



**Wangui v Jesma Publishers and Education Boosters Limited (Cause
1179 of 2018) [2024] KEELRC 13624 (KLR) (29 May 2024) (Judgment)**

Neutral citation: [2024] KEELRC 13624 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1179 OF 2018
B ONGAYA, J
MAY 29, 2024**

BETWEEN

GITHINJI WINFRED WANGUI CLAIMANT

AND

**JESMA PUBLISHERS AND EDUCATION BOOSTERS
LIMITED RESPONDENT**

JUDGMENT

1. The claimant filed the amended statement of claim dated 26.07.2023 through Kabiru & Co. Advocates. The claimant prayed for judgment against the respondent for:
 - a. A declaration that the claimant suffered unfair and unlawful termination by the respondent.
 - i. Salary arrears for the period worked from September to November 2017 (3 months)Kshs. 85,041.00
 - ii. Salary in lieu of notice.....Kshs. 62,000.00
 - iii. Service pay for the years worked.....Kshs. 39,000.00
 - iv. Leave allowance.....Kshs. 2,000.00
 - v. Mashujaa day allowance.....Kshs. 1,000.00
 - vi. House allowance.....Kshs. 153,000.00
 - vii. Twelve (12) months' salary being compensation for unfair termination.....Kshs. 744,000.00
 - viii. Accrued interest on the terminal dues owed to the claimant
 - b. Salary arrears for the entire period the claimant has been out of employment.



- c. Costs of the suit with interest thereon.
 - d. Any other relief and order that this Honourable court may deem just and fit to grant.
2. The claimant alongside her claim filed her witness statement.
3. The claimant pleaded as follows:
 - a. That she was employed by the respondent company on 02.02.2015 as a proof reader or editor where she was put on probation for six months and worked until November 2007 but was never issued with an appointment letter.
 - b. That in November 2017 she was rendered redundant due to restructuring of the company and issued with a letter to that effect.
 - c. That after the redundancy she was issued with cheques to cater for a salary arrears but later called by the respondent's accountant asking her not to deposit the said cheques since the respondent has insufficient funds in their bank account.
 - d. That the respondent intended to dismiss her without pay and clothed it as a redundancy because she was also replaced with another employee.
 - e. That the respondent did not follow the right procedure in terminating her.
4. The respondent's amended response to claim was dated 12.09.2023 through Waingajo Wachira & Company Advocates and its case was as follows:
 - a. That it employed the claimant on 02.02.2015 to 30.11.2017 with a starting salary of Kshs. 30,000/=.
 - b. That the claimant was laid off her duties due to restructuring of the company necessitated by changes in the education sector.
 - c. The respondent denied the allegations of the claimant as in her amended memorandum of claim and put her to strict proof and prayed that the said claim be dismissed with costs.
5. The parties filed their respective submissions. The court has considered the parties' respective cases and makes finding as follows:
 - a. There is no dispute that parties were in a contract of service.
 - b. There is no dispute that the contract of service was terminated on account of redundancy per letter dated 30.11.2017. the reason for redundancy was stated in the letter as changes in the education system where lower classes exams were being faced off.
 - c. The Court finds the termination was unfair in procedure and substance. The tests for a lawful redundancy per section 40 of the *Employment Act, 2007* were not shown to have been complied with. The claimant and the area labour officer appear to have received the prescribed months' notice on the extent and nature of the redundancy and the employees to be affected. The respondent called no witness to testify and show that the reason for termination existed per section 43 of the Act and that the reason was fair per section 45 thereof. The claimant's testimony that she was thereafter replaced immediately as the office she held was not abolished is evidence not rebutted at all. The termination was unfair in substance and procedure. The Court has considered the factors in section 49 of the Act. The claimant had served for 4 years. She wished to continue in employment. She did not contribute to the termination. The



respondent did not promptly pay the terminal dues per section 40. In that consideration she is awarded 8 months' gross salaries making Kshs. 30,000.00 x 8 = Kshs. 240,000.00. The award should constitute sufficient relief in the case as no violations of rights beyond breach of section 40 and unfair termination has been established and as alleged for the claimant.

- d. For the other remedies the Court returns as follows:
- i. The parties agreed on a gross monthly pay of Kshs.30, 000.00 and is deemed to have included reasonable provision for housing expenses per section 31(2) of the Act. There is no evidence of grievance about housing during service. The claim is an afterthought. It will fail.
 - ii. The claimant testified she was paid overtime whenever she worked including overtime. The claim for pay on Mashujaa day is found unjustified in light of that testimony.
 - iii. In cross-examination, the claimant admitted she was paid the outstanding salary arrears for September to November 2017. The pay in lieu of notice was as well effected per terminal dues. Service pay is not due but due severance payment was effected.
 - iv. The respondent will pay costs of the suit as the claimant has significantly succeeded.

6. In conclusion, judgment is hereby entered for the claimant against the respondent for:

1. Payment of Kshs.240, 000.00 less PAYE by 01.07.2024 failing interest to be payable thereon at Court rates until full payment.
2. Respondent to pay costs of the suit.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS WEDNESDAY 29TH MAY 2024.

BYRAM ONGAYA

PRINCIPAL JUDGE

