



**Mbai v Creative Consolidated System Ltd (Cause E739 of 2021)
[2023] KEELRC 175 (KLR) (31 January 2023) (Judgment)**

Neutral citation: [2023] KEELRC 175 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E739 OF 2021
J RIKA, J
JANUARY 31, 2023**

BETWEEN

KISEKI KISULE MBAI CLAIMANT

AND

CREATIVE CONSOLIDATED SYSTEM LTD RESPONDENT

JUDGMENT

1. There is no response to this claim.
2. The claimant states that she was employed by the respondent as a stewardess, in October 2009. She worked for 10 years. Her contract was terminated by the respondent at the end of April 2020.
3. She was not given valid reasons, to justify termination. There was no notice. Her last salary was Kshs 11,200 monthly. She pleads that termination was unfair and unlawful, and asks the court to grant the following orders: -
 - a. Unpaid salary of 4 months at Kshs 44,800.
 - b. 1-month salary in lieu of notice at Kshs 11,200.
 - c. 12 months' salary in compensation for unfair termination at Kshs 132,000.
 - d. Severance pay at Kshs 56,000.
 - e. Deducted but unremitted NSSF contributions at Kshs 6,800.
 - f. Deducted but unremitted NHIF contributions at Kshs 15,200.Total ... Kshs 265,800.
4. In her evidence on formal proof, on November 10, 2022, the claimant told the court that she was employed by the respondent as a cleaner. It is not clear if a cleaner, is the same designation as a



stewardess. She was dismissed after about 10 ½ years of service. She adopted her witness statement as her evidence-in-chief.

The Court Finds: -

5. The Claim is undefended, and the evidence on record is uncontested.
6. The Claimant was employed by the Respondent as a Stewardess / Cleaner, in October 2009. Her contract was terminated by the Respondent in April 2020. She worked for about 10 ½ years. There is no record of reasons given to her by the Respondent, to justify termination. There was no notice. Termination was unfair.
7. She was not paid her salary for January to April 2020. She is awarded 4 months' salary in arrears at Kshs 44,800.
8. Notice of 1 month is awarded at Kshs 11,200.
9. The Claimant had worked for 10 ½ year. Her disciplinary and performance record has not been faulted. She is not shown to have contributed, to the circumstances that led to termination of her contract. She merits and is awarded equivalent of 10 ½ months' salary in compensation for unfair termination, at Kshs 117,600.
10. Severance is paid in event an Employee has left employment on redundancy. It was not in the Claimant's pleadings or evidence, that termination was on account of redundancy. If she meant to claim service pay, there are documents which she exhibited from the NSSF showing that she was subscribed to the NSSF, and therefore ineligible for service pay, under section 35 [6] of the Employment Act.
11. The prayers for unpaid statutory dues should be pursued with the relevant statutory bodies. Statutory dues are not intended to revert to the contributor's pocket, if unremitted.
12. Costs to the claimant.
13. Interest allowed at court rate, from the date of judgment till payment is made in full.
14. In sum, it is ordered:-
 - a. It is declared that termination was unfair.
 - b. The respondent shall pay to the claimant: salary arrears of 4 months at Kshs 44,800; notice at Kshs 11,200; and equivalent of 10 ½ months' salary in compensation for unfair termination at Kshs 117,600 –total Kshs 173,600.
 - c. Costs to the claimant.
 - d. Interest allowed at court rate, from the date of judgment, till payment is made in full.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 31ST DAY OF JANUARY, 2023.

JAMES RIKA

JUDGE

Court Assistant: Emmanuel Kiprono

Avedi & Company Advocates for the Claimant



No appearance for the respondent

