



REPUBLIC OF KENYA



**Aseyo v Narendra (Cause 1685 of 2015)
[2023] KEELRC 545 (KLR) (28 February 2023) (Judgment)**

Neutral citation: [2023] KEELRC 545 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1685 OF 2015
J RIKA, J
FEBRUARY 28, 2023**

BETWEEN

JANET ASEYO CLAIMANT

AND

KALPA NARENDRA RESPONDENT

JUDGMENT

1. The Claim herein was filed in 2015.
2. There is no Response filed, and the Respondent did not participate in the hearing.
3. The Claimant states, and testified, that she was employed by the Respondent in November 2011 as a Domestic Help.
4. She went on maternity leave on 10th October 2013. At the end of the maternity leave of 3 months, in January 2014, she was not allowed to continue working. Her last salary was Kshs. 9,000 monthly.
5. She prays for Judgment against the Respondent for: -
 - a. Notice pay at Kshs. 11,247.
 - b. Annual leave for 3 years at Kshs. 23,818.
 - c. Gratuity at 15 days' salary for 3 years at Kshs. 13,870.
 - d. 3 months' salary over the period of maternity at Kshs. 33,741.
 - e. House allowance at 15% of the basic salary at Kshs. 52,812.
 - f. Equivalent of 12 months' salary in compensation for unfair termination at Kshs. 134,964.
 - g. Underpayment of salary at Kshs. 9,760.



- h. Certificate of Service to issue.
 - i. Costs.
 - j. Any other suitable relief.
6. She gave evidence and rested her case on 31st January 2023. She restated the averments in her Statement of Claim.

The Court Finds

7. The Claimant was employed by the Respondent, Kalpa Narendra, as his House Help, in November 2011. She went on maternity leave on 10th October 2013. The Respondent did not allow her to continue working in January 2014, once her maternity leave was over.
8. Section 29 of the *Employment Act* not only grants a Female Employee 3 months' maternity leave with full pay, but also the right to return at end of maternity leave, to the job which the Employee held immediately prior to maternity leave, or to a reasonably suitable job, on terms and conditions not less favourable than those which applied, before she went maternity leave.
9. Under Section 46 [a] of the above Act, a Female Employee's pregnancy, or any reason connected with her pregnancy, does not constitute fair reason for dismissal.
10. The Court agrees with the Claimant that she was unfairly dismissed, and denied the right to return to work.
11. She is allowed the prayers for notice pay and compensation for unfair termination as prayed, at Kshs. 11, 247 and Kshs. 134,964 respectively.
12. The Respondent did not give any evidence to contradict the Claimant on annual leave. Section 74 [1] [f] of the Act requires the Employer to keep a record of the Employee's annual leave entitlement. There is requirement to keep maternity as well as sick leave records. The Respondent has not discounted the prayer for annual leave, by production of the Claimant's annual leave entitlement records. Annual leave pay is granted at Kshs. 23,818.
13. The record on maternity leave is similarly not available to the Court. The prayer for 3 months' salary is granted at Kshs. 33, 741.
14. Underpayment of salary is well supported under Legal Notice No. 197 of 2013, and is allowed at Kshs. 9,760.
15. The Respondent again failed to produce documents, to show that the Claimant was subscribed to any Social Security Plan, contemplated by Section 35 of the *Employment Act*. She is granted the prayer for service pay under that provision, at Kshs. 13,870 as prayed.
16. There is doubt in the mind of the Court about the prayer for house allowance in arrears. The nature of the Claimant's role would suggest she was resident at the Respondent's house. She would be complaining about commuter allowance, if she was living outside the Narendra homestead. The Court is hesitant to accede to the prayer for house allowance in arrears.
17. She will have her certificate of service and costs.

In Sum, it is ordered

- a. It is declared that termination was unfair.



- b. The Respondent shall pay to the Claimant: notice at Kshs. 11,247; compensation at Kshs. 134,964; annual leave at Kshs. 23,818; maternity pay at Kshs. 33,741; and underpayment of salary at Kshs. 9,760 – total, Kshs. 213, 530.
- c. Certificate of Service to issue.
- d. Costs to the Claimant.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 28TH FEBRUARY 2023.

JAMES RIKA

JUDGE

