



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NUMBER 636 OF 2016**

**BETWEEN**

**LUCY ANDISI ELOL.....CLAIMANT**

**VERSUS**

**IRENE TABU.....RESPONDENT**

Rika J

Court ssistant: Emmanuel Kiprono

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Mandala & Company Advocates for the Claimant

Nyandoro & Company Advocates for the Respondent

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**JUDGMENT**

1. The Claimant filed her Statement of Claim on 19<sup>th</sup> April 2016.
2. She states, she was employed by the Respondent as a Househelp, on 1<sup>st</sup> August 2008.
3. She states, she earned varied progressed wages and which amounts as earned constituted underpayments, within the meaning of subsequent Regulation of Wages [General] [Amendment] Orders. She was initially paid Kshs. 3,500 monthly, against the minimum wage of Kshs. 5,195 monthly, prescribed in Legal Notice No. 38 of 2006. There were underpayments in subsequent years, under the various Legal Notices.
4. She served for 7 years and 3 months.
5. The Respondent terminated her contract verbally, without just cause or notice, on 3<sup>rd</sup> November 2015. She was not heard. No reason, or reasons were given in justifying termination.
6. She prays for Judgment against the Respondent for: -
  - a. Salary for 3 days worked in November 2015 at Kshs. 1,550.

b. Underpayments: **Legal Notice No. 38 of 2006**, August 2006 to April 2009 [Kshs. 5,195 – Kshs. 3,500] x 33 months = Kshs. 55,935; **Legal Notice No. 70 of 2009**, May 2009 to April 2010 [Kshs. 16,130 \*correct figure should be Kshs. 6,130\* –Kshs. 6,000] x 12 months = Kshs. 1,560; **Legal Notice No. 98 of 2010**, May 2010 to April 2011 [ Kshs. 6,743 –Kshs. 6,000] x 5 months = Kshs. 8,916; **Legal Notice No. 64 of 2011**, May 2011 to April 2012 [Kshs. 7,586 – Kshs. 6,000] x 12 months = Kshs. 19,032; **Legal Notice No. 71 of 2012**, May 2012 to April 2013 [Kshs. 8,579 – Kshs. 6,000] x 12 months = Kshs. 30,957; **Legal Notice No. 197 of**

2013, May 2013 to April 2015 [ Kshs. 9,780 – Kshs. 6,000] x 24 months = Kshs. 90,7542; and May to October 2015 [Kshs. 9,780 – Kshs. 8,000] x 6 months = Kshs 10,685.

- c. Annual leave over a period of 7 years and 3 months [21 days annually] at Kshs. 70,257.
- d. Leave travelling allowance over the same period at Kshs. 4,000 annually - Kshs. 29,000.
- e. A month's salary in lieu of notice, at Kshs. 11,248.
- f. 12 months' salary in compensation for unfair termination at Kshs. 134,977.
- g. General Damages, Emoluments/ Contingencies at the discount of 15% of the total amount at Kshs. 346,262.

**Total... Kshs. 753,629.**

- h. Declaration that termination was unfair and unlawful.
- i. Compensation for loss of income at Kshs 11,248 per month from 3<sup>rd</sup> November 2015 to the date of Judgment.
- j. Interest at court rates.
- k. Interest at 20% every month until settlement is cleared.
- i. Certificate of Service to issue.
- m. Costs.
- n. Any other relief.

7. The Respondent does not seem to have filed any Response to the Claim. On 18<sup>th</sup> June 2021, her Advocate Mr. Kenyatta appeared before the Deputy Registrar. It is recorded that mention was with a view to confirming, if Response had been filed. Respondent's Advocate told the Court, Response would be filed by close of business on 18<sup>th</sup> June 2021. He asked to be given a hearing date, as he complied. The Advocate for the Claimant was absent.

8. Hearing was therefore fixed by the Deputy Registrar for 30<sup>th</sup> September 2021. This procedure did not conform to the E&LRC [Procedure] Rules, 2016.

9. Statements of Response are filed within prescribed timelines. If a Party is late in filing, there must be an Application before the Judge for leave to file Pleadings out of time. Rule 15 of the E&LRC [Procedure] Rules, 2016 must be satisfied before hearing date is issued.

10. It is irregular for a Party to just appear before the Deputy Registrar, take a hearing date, on an undertaking that he or she will file Pleadings before that hearing date.

11. The matter ought to have been fixed for formal proof, in default of a Statement of Response. What was the Respondent doing for 5 years, from 2016 when the Claim was filed?

12. However, there was no appearance on the part of the Respondent, on the date the Respondent fixed for hearing *ex parte*, 30<sup>th</sup> September 2021.

13. The Claimant was heard as she ought to have been heard on formal proof, in the absence of the Respondent.

14. She told the Court that, she worked for the Respondent as pleaded. She adopted her documents as her exhibits and her witness statement as her evidence-in-chief. She confirmed that she was underpaid throughout, as particularized above. She worked for about 8 years. She was not availed notice of, or reason for, termination. She prays the Court to allow her Claim.

15. The Claim was last mentioned on 19<sup>th</sup> October 2021 when the Claimant confirmed filing and service of her Submissions. The Respondent, upon service of the Submissions, filed a Notice of Change of Advocates, and nothing more. Judgment was scheduled for 28<sup>th</sup> January 2022.

**The Court Finds: -**

- 16. The Claim is uncontested.
- 17. The Claimant was employed by the Respondent as a Domestic Worker.

18. She worked for 7 years and 3 months, dating back to 1<sup>st</sup> August 2008.

19. She has tabulated her salary underpayments, clearly supported by the various Regulation of Wages [ General] [ Amendment] Orders, expressed in Legal Notices. These legal instruments have been availed by the Claimant. The tabulations are not contested and have adequate legal and factual anchorage.

20. The prayer for underpayments, based on 6 Legal Notices, from August 2008 to October 2015, is allowed at Kshs. 217,827.

21. In the absence of annual leave documents discounting the oral evidence of the Claimant on annual leave entitlement, ***the Court accedes to her prayer for annual leave, at a minimum of 21 days each year, at Kshs. 57,269.*** This prayer has support in section 28 of the Employment Act.

22. Leave traveling allowance is not a benefit granted to an Employee under the Employment Act. It is ordinarily given in the individual contract or collective bargaining agreement. It cannot be presumed. The Claimant states she was entitled to Kshs. 4,000 in leave traveling allowance, but does not disclose if this was given in her contract or any collective bargaining agreement applicable to her. The prayer for leave traveling allowance has no support in law and fact and is declined.

23. The Claimant worked for 7 years and 3 months. She was not faced with any known accusations of a disciplinary or performance nature. She was not heard. She was not given any reason for the decision to terminate her contract. She expected to go on working. She did not in any way, contribute to this decision. **The Claimant is allowed the prayer for compensation, equivalent of her 12 months' gross earnings, based on the last applicable legal notice, at Kshs. 9,780 x 12 = Kshs. 117,360.**

24. The prayer of general damages, emoluments/ contingencies at the discount of 15% of the total amount, is unheard of in the history of employment disputes. It has no legal foundation. It is a remedial aberration. It is noted that the Claim was filed in person, but once Mr. Mandala was appointed to act for the Claimant, he ought to have taken the pleadings filed by the Claimant through his drycleaners, to give clarity, and save on judicial economy. The prayer is declined.

25. It is also not explained why, the Claimant adopts a multiplier of 1.15 in several of her prayers, or why she seeks lost income of Kshs. 11,248 monthly to the date of Judgment, while still seeking compensation for unfair termination. It is preposterous to pray for interest at court rates, and at the same time, ask for interest at the rate of 20% every month.

26. The Claimant did not come out clearly on the date she left employment. It is not specifically stated in the Statements of Claim or Witness. It was not clarified in her oral evidence. The prayer for 3 days worked in November 2015, lacks sufficiency of detail and is declined. ***Notice pay equivalent of 1- month salary at Kshs. 9,780, is allowed.***

27. Certificate of Service to issue.

28. *Costs to the Claimant.*

29. Interest allowed at court rates from the date of Judgment till payment is made in full.

**IN SUM, IT IS ORDERED: -**

**a. It is declared that termination was unfair.**

**b. The Respondent shall pay to the Claimant: underpayment of salary at Kshs. 217, 827; annual leave at Kshs. 57,269; compensation for unfair termination at Kshs. 117,360; and a month's salary in lieu of notice at Kshs. 9,780 – total Kshs. 402,236.**

**c. Certificate of Service to issue.**

**d. Costs to the Claimant.**

**e. Interest granted at court rates from the date of Judgment, till payment is made in full.**

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE JUDICIARY AND MINISTRY OF HEALTH COVID-19 GUIDELINES, THIS 28<sup>TH</sup> DAY OF JANUARY, 2022**

**JAMES RIKA**

**JUDGE**