



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

ELRC NO. 441 OF 2016

JANICE KENDI MURUNGI.....CLAIMANT

VERSUS

MAWE MBILI LIMITED.....RESPONDENT

JUDGMENT

1. The claimant sued the respondent for unlawful termination and for payment of salary in lieu of Notice, unpaid salary, severance pay, service pay and overtime dues.
2. The claimant was employed by the Respondent in November, 2013 as a waitress, on a one-year renewable contract, earning a monthly salary of Kshs.18,000/= which was increased to Kshs 20,000/=.
3. The claimant stated that she reported to work at 8am and clocked out at 10pm at night clocking 14 hours a day, which overtime was never paid by the Respondent.
4. She avers that on 15th July, 2015 she took 14 days off as is the norm and on completion of her off days she was instructed by the Respondent's Director one Jacqueline Damon to take another 14 days compulsory leave on the basis that there was low work flow at the Respondent.
5. After the 14 days the claimant inquired from the Respondent's director whether she could resume work but she did not receive any response.
6. On 13th October, 2015 the claimant received a termination letter from the Respondent directing her that her services were no longer needed and that she should go collect her dues. The Respondent however paid her Kshs. 20,000 only as terminal dues. The claimant's claim is for payment of her salary for the months of July, August and September.
7. She also claims for overtime pay throughout her employment at the Respondent of Kshs.500,376.92/= together with severance pay and service pay.
8. The claimant therefore prays for judgment against the Respondent for the following reliefs;-
 - a) **A declaration that the claimant's dismissal was unlawful, unjust and discriminative and the same amounts to unfair dismissal**
 - b) **Compensation for the unfair termination**
 - c) **An order compelling the Respondent to settle the outstanding benefits**
 - d) **General damages**
 - e) **Costs of this suits and interest thereof at Court rates.**
9. The Respondent entered appearance on the 2nd December 2016 and filed a response to claim on the 20th February, 2017. According to the Respondent, the claimant contract came to an end and the letter of 13th October, 2015 was merely to inform the claimant of the said fact which was within her knowledge.
10. The Respondent denied ever terminating the services of the claimant and avers that the contract of services came to an end by effluxion

of time.

11. It is the Respondent's case that the claimant was paid all her terminal dues which she signed acknowledging receipt thereof.

12. During hearing the claimant testified as CW-1 and adopted her witness statement dated 25.10.2016. She testified that she worked till late most of the times and was not paid any overtime. She averred that her services were terminated while she was on off duty and was only called by the Respondent and informed that her services were no longer needed and then paid Kshs.18,000 as terminal dues, which she said were her July salary and therefore her August to October salary was yet to be paid which she now claims.

13. On cross-examination, CW-1 testified that she was initially employed on casual basis however in the year 2015 she was employed on a renewable contract of one year which was to end in October, 2015. She averred that she was instructed by John Mpoke, at the Respondent to take 14 days compulsory leave in Early August, 2015 and was never recalled back till her services were terminated in October, 2015 and paid only 18,000 when she had not been paid for from July to October, 2015.

14. On further cross examination, she testified that she was never served with the notice to show cause and that she saw it for the first time in Court. She also admitted signing the acknowledgement letter of receiving Kshs.18,000 but that the said sum was not all she was entitled to as terminal dues.

15. The Respondent's witness, Peter Kagori testified as RW-1. He is the Respondent's accountant. He adopted his witness statement dated 12.3.2021 and in addition stated that the claimant's contract came to an end and the letter of 13.10.2015 was a mere reminder to the said fact therefore the claimant was not terminated as alleged. He also stated that the claimant was paid her dues of Kshs.18,000/= and signed a discharge voucher.

16. On cross examination, he testified that he was employed in the year 2015 and has never interacted with the claimant while she was an employee at the Respondent. He averred that there was fire at the Respondent's premises that razed down most documents of records of employees. He contended that the claimant was suspended for 7 days during the said period and that no disciplinary hearing was carried out before the termination.

17. On further cross examination, RW-1 testified that the claimant was a member of NSSF and NHIF and the said deduction were duly remitted to the relevant bodies. He also testified that the Respondent paid the claimant each month and that no arrears are owing.

Claimant's Submissions.

18. The claimant submitted that she was sent on compulsory leave by the Respondent only for her services to be terminated while still on the said leave. It was argued that termination did not meet the substantive or the procedural fairness test as no reason was given for the termination neither was she subjected to any disciplinary hearing to answer to any queries. The claimant cited the case of **Daniel Kipkurui Keter V Securex Agencies (K) Limited [2018] eKLR**

19. The claimant then urged this Court to find in her favour and allows the claim as prayed.

20. The Respondent's submissions were not on record at the time of writing this Judgment.

21. I have examined the evidence and submissions of the parties herein. The respondent's contention is that the claimant was on a one year contract which expired on 31/10/2015. They aver that they didn't terminate the services of the claimant.

22. The claimant contends that she was terminated while on off duty and informed that her services were no longer needed. No termination letter was produced by the claimant. The letter also showing that the claimant was on a one year contract was also not produced by either the claimant nor the respondent but in cross examination, the claimant admitted that in January 2015, she was placed on a yearly contract and the contract was to end in October 2015.

23. The claimant contends that she was told not to report back to work in July 2015 and was paid 18,000/= only.

24. Given the admission that the contract was to end in October 2015 and the claimant was paid only up to July 2015 it follows that the claimant's contract was terminated before its due date in October 2015 and so the claimant is entitled to payment of her salary up to 31/10/2015 which is for August to October 2015 = $3 \times 18,000 = 54,000/=$

25. The contract having been terminated before its due date the claimant is also entitled to payment of 3 months salary as compensation for the unlawful termination

= $3 \times 18,000 = 54,000/=$

26. The **TOTAL** the claimant is entitled to = 108,000/= plus costs of interest at court rates with effect from the date of this Judgment.

DATED AND DELIVERED IN OPEN COURT THIS 18TH DAY OF JANUARY, 2022.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Muriithi for respondent – present

Chege for claimant – absent

Court Assistant - Fred