



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 61 OF 2018

JUDITH AUMA JOWI CLAIMANT

VERSUS

KINANGOP DAIRY LIMITED.....RESPONDENT

JUDGMENT

1. Judith Auma Jowi (the Claimant) sued Kinangop Dairy Ltd (the Respondent) on 15 March 2018, alleging a breach of contract.
2. The Respondent filed a Response on 30 May 2018 (out of time), and the Court admitted it on 19 September 2019.
3. The parties filed Agreed Issues on 16 February 2021, and the Cause was heard on 15 November 2021.
4. The Claimant and the Respondent's Human Resources Manager testified.
5. The Claimant filed her submissions on 26 November 2021, while the Respondents submissions were not on record by this morning.
6. The Court will examine the Cause in terms of the Agreed Issues filed by the parties.

Unlawful termination of employment

Procedural fairness

7. Section 35(1)(c) of the Employment Act, 2007 requires the employer to issue written notice of termination of employment to an employee, while section 41 of the Act calls upon the employer to afford the employee an opportunity to be heard if the reason for termination is one of the three listed grounds.
8. The Claimant's contract provided for a 6-months' probation period.
9. Clause 4 of the contract required the giving of 7-days' notice of termination during the probation period or equivalent pay in lieu of notice.
10. The Respondent opted to terminate the contract by offering 7-days' pay in lieu of notice.
11. The Court cannot fault the Respondent on the question of due process.
12. Therefore, the plea for a 1-month salary in lieu of notice is without foundation, and the head of the relief is declined.

Validity and fairness of the termination

13. The reason given by the Respondent for terminating the Claimant's contract was work performance.
14. The Claimant's contract provided in clause 5 for the setting of targets by the Regional Sales Manager.
15. The Respondent did not provide any evidence during the hearing that the targets were set or that the Claimant did not meet the targets.

16. Without setting the targets and with the dearth of information on how the Claimant did not meet the performance expectations, the Court can conclude that the termination of the Claimant's contract was not for valid or fair reasons.

Compensation

17. The Claimant served the Respondent for barely 2-months, and the Court is of the view that this is not an appropriate case to award compensation.

Unpaid salary

18. The Respondent offered the Claimant salary up to 17 November 2017, and nothing turns on this head of the claim.

Accrued Leave

19. The Respondent offered the Claimant the equivalent of 3.5 days accrued leave for the 2 months she served.

20. The offer was in consonance with section 28(1)(b) of the Employment Act, 2007.

Certificate of Service

21. A Certificate of Service is a statutory entitlement, and the Respondent should issue one to the Claimant within 21-days

Clearance

22. The Respondent asserted that it had not paid the Claimant her dues because she had failed to clear.

23. During cross-examination, the Claimant maintained that she had cleared with the Respondent and gave the clearance form to her supervisor, one Gregory.

24. The said Gregory was not called to testify, and the Court finds that the Claimant cleared.

Conclusion and Orders

25. The Court finds and declares that the termination of the Claimant's employment was not for valid and fair reasons, but the Court declines to award compensation.

26. The Claimant is awarded:

- i. 7-days' pay in lieu of notice.
- ii. Salary for November 2017.
- iii. Accrued leave for 3.5 days.

27. The Respondent is directed to compute and pay the dues within 21-days, failure to which the dues to attract interest at court rates, from date of termination of employment, 17 November 2017.

28. The Respondent is further ordered to issue a Certificate of Service to the Claimant within 21-days.

29. The Claimant to have costs.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 9TH DAY OF

FEBRUARY, 2022

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant Amos O. Oyuko & Co. Advocates

For Respondent Wandune Associates, Advocates

