



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 49 OF 2017

BETWEEN

ALICE WAMBUI ADWORDY.....CLAIMANT

VERSUS

CASA DEI BAMBINI LIMITED.....RESPONDENT

Rika J

Court Assistant: Emmanuel Kiprono

Kevin & Associates LLP, Advocates for the Claimant

Muturi Mwangi & Associates, Advocates for the Respondent

JUDGMENT

1. The Claimant filed an Amended Statement of Claim, on 17th March 2017.
2. She states, she was employed by the Respondent as Teacher, around September 2014.
3. On or about 2nd November 2016, the Respondent terminated Claimant's contract. There was no justification. There was no hearing. She was denied terminal benefits.
4. Her salary was Kshs.38,000 monthly. She states, her salary ought to have included N.S.S.F contribution of Kshs.400 and N.H.I.F contribution of Kshs.950, totalling Kshs.39,350 monthly.
5. The Respondent made statutory deductions from the Claimant's salary with respect to N.S.S.F. N.H.I.F and P.A.Y.E, but failed to remit the deductions to the relevant bodies.
6. She prays for Judgment against the Respondent for: -
 - a. Declaration that termination was unfair and unlawful.
 - b. 12 months' salary in compensation for unfair termination at Kshs. 472,000.
 - c. Notice pay at Kshs. 39,350.
 - d. Leave pay at Kshs. 100,000.

- e. Gratuity at Kshs. 638,000.
- f. Reimbursement of statutory deductions at Kshs. 13,500.
- g. Certificate of Service.
- h. General damages for breach of fundamental rights.
- i. Interest from 1st November 2016.
- j. Costs.
- k. Any other suitable relief.

7. The Respondent does not seem to have filed a Statement of Response, but instead filed what it described as Replying Affidavit to Memorandum of Claim, and Replying Affidavit to Amended Statement of Claim.

8. The Affidavits are sworn by Mercy Wanjiku Kiarie-Hoffman, a Director of the Respondent. She concedes that the Claimant was employed by the Respondent. She was not however, offered a permanent position. The Claimant was not summarily dismissed. She reported to work late on 1st November 2016. Hoffman decided to terminate her contract, in accordance with the Employment Act. All Teachers including the Claimant, earned a consolidated salary of Kshs. 38,000. All statutory deductions made were forwarded to the relevant bodies.

9. The Claimant was away on annual leave, whenever the School was on holiday or midterm break.

10. Termination was in accordance with the Employment Act, and the terms and conditions of employment.

11. Hearing was scheduled for 24th September 2021. The date was scheduled before the

Deputy Registrar on 8th June 2021, in the presence of the Parties' Advocates. The Respondent did not attend Court on the hearing date. The Claimant gave evidence ex parte, and rested her case on 24th September 2021

12. The Claimant adopted in her evidence, her Statements of Claim and Witness, and Documents exhibited as No. 1-6. The evidence is as summarized by the Court in the preceding paragraphs in this Judgment.

The Court Finds: -

13. The Respondent has not shown seriousness in responding to this Claim.

14. Instead of entering appearance and filing a Statement of Response as required under E&LRC [Procedure] Rules, 2016, the Respondent filed Replying Affidavits.

15. The Court could ignore these Affidavits, or strike them out, and proceed on the basis that there is no Response on record. But the Court has not done so, and has accommodated the Respondent, by taking into account the contents of the irregular Affidavits.

16. Having made its unorthodox response, the Respondent was involved in taking a hearing date, but did not show up on the hearing date. No evidence was recorded for the Respondent. The evidence by the Claimant was not challenged.

17. It is established that the Claimant was employed by the Respondent as a Teacher, in September 2014. Her salary was Kshs. 38,000. There is no evidence to support her claim that statutory deductions ought to have been included in her salary.

18. Her contract was terminated on 1st November 2016. It was terminated through summary dismissal. Hoffman states in her Affidavit that she did not summarily dismiss the Claimant. The Claimant reported to work on 1st November 2016. She was told her contract had been terminated. There was no notice. There was no hearing. Under the Employment Act, this was a summary dismissal. It was an unfair termination, carried out in total disregard of Sections 41,43 and 45 of the Employment Act.

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

20. The Claimant worked for 2 years. There is no evidence to suggest that she could be blamed for any role, in circumstances leading to termination of her contract. She was not paid anything in terminal dues. ***She is allowed compensation for unfair termination, equivalent of 6 months' salary at Kshs. 228,000.***

21. ***The prayer for notice pay is allowed at Kshs. 38,000.***

22. The Claimant did not persuade the Court that she was entitled to annual leave, outside the School's holiday and midterm calendar. Teachers ordinarily take their break with their learners, so that there is no interruption, in the smooth running of the academic calendar. The

Claimant has not in any case, shown how she arrived at a figure of Kshs. 100,000 as annual leave pay. The prayer is declined.

23. There is no legal or factual foundation to the prayer for gratuity at Kshs. 638,400. The figure is just plucked from the blues. The principle upon which it is claimed is not shown. It is not a benefit pegged to the contract of employment, any policy, or statutory provision. The prayer is declined.

24. The prayer for reimbursement of statutory deductions is rejected. There are no statements of the Claimant's Accounts with the N.S.S.F, N.H.I.F and the K.R.A, authenticating these claims. If deductions were made but not remitted, the Claimant should pursue remittance with the relevant bodies. The prayer for reimbursement is declined.

25. ***Certificate of Service shall be issued to the Claimant, under Section 51 of the Employment Act, 2007.***

26. The prayer for general damages for violation of Claimant's fundamental rights, has no basis. She has been granted compensation for violation of her statutory guarantees and protections under the Employment Act, 2007.

27. ***Costs to the Claimant.***

28. ***Interest allowed at court rates from the date of Judgment, till payment in full.***

IN SUM, IT IS ORDERED: -

- a. ***Termination was unfair.***
- b. ***The Respondent shall pay to the Claimant: equivalent of 6 months' salary in compensation for unfair termination at Kshs. 228,000; and notice at Kshs. 38,000 – total Kshs. 266,000.***
- c. ***Certificate of Service to issue.***
- d. ***Costs to the Claimant***
- e. ***Interest allowed 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 MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 4TH DAY OF FEBRUARY 2022.

JAMES RIKA

JUDGE