



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 200 OF 2018

FLORENCE ACHOK.....CLAIMANT

VERSUS

TRUSTEES, AFRICAN INLAND CHURCH (OGADA CHILDRENS' HOME).....RESPONDENT

JUDGMENT

1. The Claimant sued the Respondent on 21 May 2018. She identified the Issue in dispute as:

Unlawful termination of the Claimant's employment contract in contravention of her employment rights, unpaid terminal dues.

2. The Respondent filed a Response on 29 June 2018, which prompted the Claimant to file a Reply to the Response on 16 July 2018.

3. Agreed Issues were filed on 5 March 2021.

4. The Cause was heard on 4 October 2021 and 18 January 2022.

5. The Claimant filed her submissions on 21 January 2022, and the Respondent on 3 March 2022.

The Court has considered the pleadings, evidence, and submissions.

Unfair termination of employment

7. Section 47(5) of the Employment Act, 2007 requires the employee to prove at the first instance that an unfair termination of employment occurred before the employer is called upon to justify the decision to terminate.

8. The Respondent offered the Claimant a 2-year contract through a letter dated 15 September 2014. On 15 September 2016, the Respondent offered the Claimant a 6-month contract (the contract was to expire on or around 14 March 2017).

9. Upon expiry of the contract, the Claimant did not sign a formal contract.

10. On 23 June 2017, the Respondent suspended the Claimant for a 1-month. The suspension was to allow investigations into allegations that the Claimant had violated the Respondent's child protection policy.

The Claimant appealed against the suspension on 10 July 2017, and on 24 July 2017, she reported back to work.

12. Upon returning to work, the Respondent issued the Claimant a new contract. The Claimant allegedly declined to sign the contract because she was not briefed on the status of the investigations conducted during her suspension.

13. On 26 July 2017, the Respondent notified the Claimant of the termination of the contract. The Respondent also advised the Claimant to vacate the premises by 31 July 2017. The Respondent paid the Claimant 3-months' salary up to September 2017.

14. When the Claimant's last contract lapsed on 14 March 2017 without formal renewal, the Respondent allowed her to continue working.

15. The Respondent's conduct effectively renewed the contract on a month-by-month basis, considering that the Claimant was paid by the

month.

16. Consequently, the Claimant became entitled to the protections assured employees by the Employment Act, 2007 and more so, sections 35(1)(c) and 41 of the Act.

17. The Claimant declined attempts by the Respondent to have her execute a new contract because she wanted to know the outcome of investigations that she had violated the Respondent's child protection policies.

18. Since the Claimant declined to sign a formal contract, the Court finds that this was not a case of unfair termination of employment.

19. However genuine or valid the Claimant's reasons for declining to execute the contract, the outcome of the investigations was an issue she could have pursued while in employment. An update on the investigations was not an essential ingredient of the contract warranting refusal to sign a new contract. The Claimant was the author of her misfortunes.

20. The Court finds that compensation and pay in lieu of notice are not available as remedies.

Breach of contract

Leave allowance

21. The Claimant prayed for Kshs 70,398/- as leave allowance.

22. The Claimant's contract did not provide for the payment of leave allowance. The Employment Act, 2007, being the general law of employment, does not also provide for leave allowance.

23. The Court declines to allow this head of the claim.

Unpaid off days/overtime

24. These heads of the claim constituted special damages that required specific pleading and strict proof.

25. The Claimant did not meet the threshold of the pleadings, and proof and relief are declined.

Gratuity

26. The Employment Act, 2007 does not provide for the payment of gratuity.

27. The Claimant's contract did not also provide for gratuity.

28. Without a contractual or legal foundation, relief is declined.

Conclusion and Orders

29. From the foregoing, the Court finds no merit in the Cause, and it is dismissed with no order on costs.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 30TH DAY OF MARCH 2022.

RADIDO STEPHEN, MCIARB

JUDGE

APPEARANCES

FOR CLAIMANT

OWITI, MWALO, ODHIAMBO & ASSOCIATES ADVOCATES

FOR RESPONDENT

D.K. GITHINJI & CO. ADVOCATES

COURT ASSISTANT

CHRISPO AURA