



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 2049 OF 2016

BETWEEN

MERCY WANGECI MUHIHU.....CLAIMANT

VERSUS

NYAGA MECHANICAL ENGINEERING LIMITED....RESPONDENT

Rika J

Court Assistant: Emmanuel Kiprono

Macharia Waiganjo & Company Advocates for the Claimant

No appearance for the Respondent

JUDGMENT

1. The Claimant filed her Statement of Claim on 9th October 2016. She states, she was employed by the Respondent as a Secretary, in the year 2012. Her salary was Kshs. 15,000 monthly. Her contract was terminated by the Respondent on 7th August 2015, without cause or notice. There were no charges against her, and no hearing.

2. She prays the Court to find that termination was unfair and grant her the following orders: -

- a. 1 month's salary in lieu of notice at Kshs. 15,000.
- b. Salary for August 2015 at Kshs. 15,000.
- c. Annual leave for the entire period at Kshs. 60,000.
- d. 12 months' salary in compensation for unfair termination at Kshs. 180,000.

Total... Kshs. 270,000.

- e. Declaration that termination was unfair.
- f. Damages for wrongful dismissal.
- g. Costs.
- h. Interest.
- i. Any other suitable relief.

3. The Respondent did not enter appearance or file Response to the Claim. There was no attendance by the Respondent, when the matter was

scheduled for mention. The Claim was heard without the Respondent, on 4th November 2021.

4. The Claimant adopted as her evidence, the contents of her Statements of Claim and Witness. She exhibited 3 documents.

The Court Finds: -

5. The Claim is undefended.

6. There is evidence that the matter was reported to the Ministry of Labour. Conciliation was thwarted by the Respondent, who like in the proceedings herein, kept away.

7. The Claimant worked for 3 years as Respondent's Secretary, on a monthly salary of Kshs. 15,000. The Respondent terminated her contract on 7th August 2015. There was no notice or reasons given to justify termination. There was no hearing in any form. The Claimant cannot be faulted for the decision to end the contract.

8. The Claimant has established her Claim to the required standard. The only adjustment the Court would wish to make is on compensation. A service period of 3 years does not appear to the Court long enough, to justify maximum compensation allowable at equivalent of 12 months' salary. ***Compensation is awarded at equivalent of 7 months' salary at Kshs. 105,000.***

9. Other prayers are allowed as prayed, including notice and salary for August 2015 at Kshs. 15,000 each, and annual leave at Kshs. 60,000.

10. It is declared that that termination was unfair.

11. The prayer for general damages for wrongful dismissal is unmerited in light of grant of statutory compensation.

12. Costs to the Claimant from the date of Judgment till payment is made in full.

13. Interest allowed at court rates from the date of Judgment.

IT IS ORDERED: -

a. It is declared that termination was unfair.

b. The Respondent shall pay to the Claimant the total sum of Kshs. 180,000 as detailed above.

c. Costs to the Claimant.

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

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT MOMBASA, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID -19 GUIDELINES, THIS 2ND DAY OF MARCH 2022.

JAMES RIKA

JUDGE