



**Wamuyu v Twin Brother Service Limited (Cause 243 of 2018)
[2022] KEELRC 1241 (KLR) (21 July 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1241 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE 243 OF 2018
HS WASILWA, J
JULY 21, 2022**

BETWEEN

BERNADETTE WAMUYU CLAIMANT

AND

TWIN BROTHER SERVICE LIMITED RESPONDENT

JUDGMENT

1. The Claimant sued the Respondent for wrongful dismissal of his employment and sought to be compensated for the said unfair termination.
2. The Claimant states that she was employed by the Respondent on 15th November, 2014 as a cleaner earning a monthly gross salary of Kshs 5,500.
3. She worked for the Respondent until 3rd May, 2017 when she was suspended for 14 days and on resuming back to work on 17th May, 2017, she worked for a day and then was send back home on 18th May, 2018 and advised to stay at home until she was recalled.
4. The Claimant stayed at home for about 6 months and noticed that the time was fast running and there was no call from the Respondent informing her decision to visit her Union, Kenya Union of Commercial Food and Allied Workers Union to report the issue.
5. The Union then wrote a letter to the Respondent dated 20th November, 2017 requesting for a meeting on 23rd November, 2017, which letter did not elicit any response. The matter was escalated to the ministry of Labour and a conciliator was appointed to resolved the issue however the issue was not resolved.
6. The Claimant maintain that her termination was unfair for want of reason and procedure as envisaged under section 41, 43 and 45 of the *Employment Act*.
7. It is alleged that the Claimant was underpaid throughout her employment at the Respondent.



8. In view of the above the Claimant prayed for the following reliefs; -
 - i. One-month salary in lieu of Notice of Kshs. 13,715.
 - ii. Two (2) years annual leave dues of Kshs 19,265.
 - iii. 8 months prorata leave of Kshs. 6,422.
 - iv. Two (2) years and Eight (8) months' salary underpayments of Kshs. 188,098.
 - v. Twelve (12) months gross salary being compensation for unlawful loss of employment of Kshs 164,580.
 - vi. Costs of the suit be to the Claimant's Union.
 - vii. Interest at Court rates on the above be to the Claimant.
 - viii. Certificate of service.
 - ix. Any other relief as the Court may deem fit.
9. The Respondent was served with the pleadings of this cause on the 9th December, 2021 as per the Affidavit of service deposed upon by Richard Kerich on the 10th January, 2022. Despite service of pleadings, the Respondent did not enter appearance or filed a response to claim therefore the claim proceeded as an undefended claim.
10. During hearing, the Claimant testified as CW-1 and adopted her witness statement dated 19th September, 2018 which basically reiterated the contents of the claim. She also produced the documents filed on the 19th September, 2018 as Claimant's exhibit 1 to 8 respectively.
11. She testified further that she, with assistance of her Union, tried resolving the issue amicably with the Respondent but the same did not bear any fruits. She stated that she was employed from November, 2014 till May, 2017 when she was dismissed. She stated that at the time of termination she was earning Kshs 6,000 when the Regulations of wage Orders provided for payment of Kshs 13,715 for a cleaner.
12. The cause for suspension according to the Claimant was that she needed to attend to a personal matter on the 1st May, 2017 and instead she was suspended for 14 days. upon lapse of suspension period she reported back to work, worked for a day and the next day she was summoned by the director in his office and told to go back home and wait for communication from the Respondent which she complied and was never called back by the Respondent.
13. She testified that she was not paid upon the said termination and urged this Court to allow the claim as prayed.

Claimant's Submissions.

14. The Claimant submitted that the termination of his services was unfair and unlawful as it failed the substantive and procedural fairness test under the Employment Act. She argued that there was no reason given for the said termination, neither was due procedure followed before the termination as such the termination ought to be held as unfair as per section 45 of the Employment Act.
15. On the reliefs sought, it was submitted that having been terminated unfairly, the Claimant is deserving of the one-month Notice pay prayed for. On underpayment it was submitted that the Claimant was paid Kshs 5500 upon employment till September, 2016 when his salary was increased to Kshs 6,000,



a salary she earned till her termination. The Claimant also prayed for annual leave pay and argued that he was never granted leave or off days throughout her employment with the Respondent.

16. In conclusion, it was submitted that the Claimant has proved her case to the required standard and urged this Court to allow the Amended claim as prayed.
 17. I have examined the evidence and submissions of the Claimant herein.
 18. The Claimant exhibited evidence that she was the Respondent's employee. She exhibited the suspension letter dated 3/5/2017 indicating that she was suspended for a period of 14 days for failure to report to work without permission.
 19. There is no evidence of what transpired after the suspension but the Claimant's union wrote to the Respondents complaining that the Claimant had been unlawfully terminated from work.
 20. A dispute was also reported to the Ministry of Labour and a conciliator was appointed to resolve the matter.
 21. From the exhibits submitted the conciliator reached out to the Respondents to try and resolve this matter no success.
 22. The conciliator then issued a certificate of the unresolved trade dispute.
 23. The evidence adduced by the Claimant of the unfairness to her remain uncontroverted.
 24. The Claimants case is proved as expected.
 25. I find for Claimant and award her as follows;-
 1. 1 Month's salary in lieu of notice = 13,715/=
 2. Annual leave dues as prayed = 19,265/=
 3. 2 years and 8 months salary underpayment = 188,098/=
 4. 8 months salary as compensation for the unlawful termination = 8 x 13,715 = 109,720/=TOTAL = 330,798/=
- Less statutory deductions
5. Issuance of a certificate of service
 6. The Respondents will pay costs of this suit plus interest at Court rates with effect from the date of this Judgment.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 21ST DAY OF JULY, 2022.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Moenga for Claimant – present

Respondents – absent

Court Assistant - Fred

