



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO.404 OF 2017

LILIAN ACHIENG AKEYO.....CLAIMANT

VERSUS

ABDIKADIR OMAR ADEN.....1ST RESPONDENT

KAMAR GURHAN HASSAN.....2ND RESPONDENT

JUDGEMENT

The claimant filed the memorandum of claim on 28th February, 2018 and served the respondents on 18th December, 2017 but there was no appearance or defence filed. Satisfied that the respondents were notified of these proceedings and opted not to attend, the court heard the claimant on her case.

Claim

The claimant's case is that she is an adult female; the respondents are man and wife and in June, 2013 employed her as a domestic worker at a monthly wage of ksh.8, 000 per month. The claimant worked until 7th November, 2016 when her employment was terminated without notice, hearing or being given any reasons or payment of her terminal dues.

The claim is also that during public holidays the claimant would be at work without compensation.

Work hours were 6AM to 11PM and the overtime hours were not compensated.

The claimant is seeking the following dues;

- a) Notice pay at Ksh.8,000;
- b) NHIF for 40 months Ksh.16,000;
- c) NSSF for 40 months Ksh.32,000;
- d) Work during public holidays Ksh.36,960;
- e) Weekend pay ksh.142,400;
- f) One year compensation Ksh.96,000;
- g) House allowance ksh.48,000;
- h) Overtime pay ksh.600,000;
- i) Annual leave for 3.4 years ksh.26,400; and
- j) Special damages.

The claimant testified in support of her claims as set out in the Memorandum of Claim.

Determination

The failure by the employer to attend and defend the suit denies the court crucial evidence and any work records governing the employment relationship.

The court shall rely on the pleadings, the evidence and the applicable law in analysing the claim and assessing the dues claimed.

Employment is not contested and whatever reasons led to termination of employment, the law requires the employer to issue notice to the employee giving reasons even in a serious case of gross misconduct of misconduct pursuant to section 44, 43, 41 and 35 of the Employment Act, 2007 (the Act). Without any record of the procedures undertaken by the respondents and leading to termination of employment, the court takes it there was no due process or substantive reasons for the same.

Such renders the termination of employment unlawful and unfair contrary to section 43 and 45 of the Employment Act, 2007. The decision to terminate employment must have a legal basis as otherwise the employer should issue notice or payment in lieu thereof, which is not the case here.

Accordingly, the claimant is entitled to notice pay at one month pursuant to section 35 of the Act at Ksh.8, 000.

As there are no reasons leading to termination of employment offered, the claimant is entitled to compensation pursuant to section 45 and 49 of the Act and a payment of three (3) month gross wage is hereby found appropriate all at ksh.24, 000.

The claims for NHIF and NSSF payments are not due. These are statutory payment owed to the statutory bodies and not payable to the employee and the end of employment. Where there were no statutory deductions or payments, the claimant ought to have claimed in service pay.

The claims for work over weekends I son the basis that the claimant was working from 6AM to 11PM every day of the week without break or time off. The tabulation of the hours is apparent to the court that this includes two days meaning Saturday and Sunday.

Section 27 of the Act allow for a single rest day in a given week. To include two days for weekend as a special payment is an obvious exaggeration and is hereby declined.

Overtime is claimed under the same principle and a multiplier of 7 days to arrive at a total of 1200 days for the period 3 years and 4 months worked. This is to seek unjust enrichment.

Annual leave is due pursuant to section 28 of the Act. The claim for 26,400 is reasonable and is hereby allowed.

Special damages are claimed save there is no evidence submitted as to what comprise such claims.

On the claim for house allowance, this is not automatically due. Where the claimant was working from 6AM to 11PM into the night, such connote accommodation was by the respondents. House allowance is not due in such circumstances.

The claim for work during public holidays in made in general terms and without particulars. Public holidays and gazetted each year and are not general. Such claim is declined.

Before conclusion, the claimant has based her claims on a wage of ksh.8, 000. This is an obvious underpayment. This was not pleaded or addressed.

Accordingly, judgement is hereby entered for the claimant against the respondent in the following terms;

a) Compensation awarded at ksh.24,000;

b) Notice pay ksh.8,000;

c) Annual leave Ksh.26,400;

d) Costs of the suit.

DELIVERED IN OPEN COURT AT NAIROBI THIS 31ST DAY OF MAY, 2021.

M. MBARU

JUDGE

In the presence of:

Court Assistant: Okodoi

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