



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT MOMBASA**

**CAUSE NO. 306 OF 2018**

**WINNIE GICHOVI.....1<sup>ST</sup> CLAIMANT**

**MWANAHANA KHAMIS.....2<sup>ND</sup> CLAIMANT**

**ZULFA ATHUMANI SHAURI.....3<sup>RD</sup> CLAIMANT**

**- VERSUS -**

**PREACH PEACE COMMUNITY ORGANIZATION.....RESPONDENT**

**(Before Hon. Justice Byram Ongaya on Friday 18<sup>th</sup> June, 2021)**

**JUDGMENT**

The claimants filed the memorandum of claim on 09.05.2018 through Abondo Angáwa Advocate of Kituo Cha Sheria. The claimants' case is that the respondent, a non-governmental organisation, employed them on contract. The claimants further pleaded as follows:

- a) The 1<sup>st</sup> claimant was employed as a media adviser on contract from 01.08.2017 to 31.10.2017 at Kshs. 25, 000.00 per month.
- b) The 2<sup>nd</sup> claimant was employed as a secretary from 01.08.2017 to 03.10.2017 at Kshs. 30, 000.00 per month.
- c) The 3<sup>rd</sup> claimant was employed as a receptionist from 01.08.2017 to 31.10.2017 at Kshs.20, 000.00 per month.
- d) The respondent unlawfully and prematurely terminated the claimants' employment on 11.10.2017 without justifiable cause or reason. They had not been paid salaries for August and September and 13 days worked in October 2017 and they claimed the payment. It is their case the termination was unfair and unlawful and the procedure was unfair. The failure to pay salaries and to give termination breached provisions of
- e) Upon particularised claims on the headings of one-month salary in lieu of notice; compensation for breach of contract at one-month salary; and unpaid salary for 2 months and 13 days, the 1<sup>st</sup> claimant claimed a sum of Kshs.116, 528.00; the 2<sup>nd</sup> claimant Kshs.138, 722.00; and the 3<sup>rd</sup> claimant Kshs.92, 481.00.
- f) The claimants prayed for judgment for the payment as claimed, certificate of service, any other relief the Honourable Court deems fit and just to grant to meet the ends of justice, and costs of the suit.

Despite service, the respondent failed to enter appearance, to file a response, and failed to attend at the mentions and the hearing of the suit. The 1<sup>st</sup> claimant testified to support the claimants' suit and as had been authorised by the 2<sup>nd</sup> and the 3<sup>rd</sup> claimants to do so. She relied on the exhibited signed letters on offer and acceptance of employment concluded between each claimant and the respondent. The letter dated 11.10.2017 by J.Nyaga, County Labour Officer shows that the respondent's Pastor Geoffrey Mwangha was advised that failure to pay the salaries contravened section 18 of the Employment Act, 2007 and amounted to breach of contract. The 1<sup>st</sup> claimant testified that despite that advisory, they were not paid at all. Thus Kituo Cha Sheria issued the demand letter dated 29.01.2018 but the respondent did not reply. The suit was therefore filed. The 1<sup>st</sup> claimant testified that the respondent's pastor was not happy when they reported their grievances to the County Labour Officer and he told the claimants to get out of the office and never to go back to the premises.

Final submissions were filed for the claimants. It is submitted that they have by evidence established that they were employed by the respondent at the salaries stated in the memorandum of claim and the letters of employment exhibited. Further per section 35(1) (b) of the Employment Act, 2007 they are entitled to the pay in lieu of the termination notices as claimed. It is further submitted that they were not given reason for termination and each should be awarded 12 months' salaries for unfair termination.

The Court has considered all the material on record and finds as follows.

a) The claimants have established they were employed by the respondent as claimed and as per written contracts of service exhibited. The monthly pay and three months' tenure is proved. As submitted and as per the advisory in the letter by the County Labour Officer the claimants are entitled to pay for the 2 months and 13 days worked together with a one-month salary in lieu of notice.

b) The claimants pray each be paid one-month salary for unfair termination. The 1<sup>st</sup> claimant testified that the reason for termination was that they had reported the respondent to the County Labour Officer for failure to pay salaries as had been agreed upon. The Court finds that the claimants had a valid grievance with a good foundation and such valid and genuine complaint amounted to a lawful grievance. The law is that an employee cannot be punished on account of raising a genuine grievance. In particular section 46(h) of the Employment Act states that it does not constitute a fair reason for dismissal or imposition of a disciplinary penalty where an employee initiates or proposes to initiate a complaint or other legal proceedings against his employer, except where, the complaint is shown to be irresponsible and without foundation. The Court finds that the report to the County Labour Officer about unpaid salaries was neither irresponsible nor without foundation as the respondent had indeed failed to pay the salaries and there appears not to have existed an internal grievance management procedure or mechanism. The Court finds that the reason for termination was unfair and the termination was unfair in substance. The Court has considered the factors in section 49 of the Act for award of compensation for unfair termination. The claimants desired to serve the full three months' contract. Each had a clean record of service having successfully served the previous three months' contract. The aggravating factor was that they had worked for 2 months and 13 days but without pay. In the circumstances, the Court finds that the one-month salary in compensation for unfair termination is justified and is awarded accordingly. It was submitted that each be awarded 12 months' salaries but the Court finds that the claimants are bound by their claim and prayer for only one-month salary in that regard. Further, the Court has considered that if the claimants served the entire tenure it would be an entitlement to only 3 months' pay and the one month pay in compensation serves ends of justice adequately.

c) As submitted each claimant is entitled to a certificate of service per section 51 of the Act. The claimants have been successful in their case and are awarded costs of the suit.

In conclusion judgment is hereby entered for the claimants against the respondent for:

- 1) Payment to the 1<sup>st</sup> claimant a sum of **Kshs.116, 528.00**; the 2<sup>nd</sup> claimant **Kshs.138, 722.00**; and the 3<sup>rd</sup> claimant **Kshs.92, 481.00** by 01.08.2021 failing interest at Court rates to be payable thereon at Court rates from the date of this judgment till the date of full payment.
- 2) The respondent to deliver to each claimant a certificate of service within 30 days from the date of this judgment.
- 3) The respondent to pay the claimants' costs of the suit.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT MOMBASA THIS FRIDAY 18TH JUNE, 2021.**

**BYRAM ONGAYA,**

**JUDGE**