



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 1913 OF 2016**

**(Before Hon. Lady Justice Christine N. Baari)**

**CHRISTINE WANGUI TATUA ..... CLAIMANT**

**VERSUS**

**GREENHOUSE MANAGEMENT LTD.....RESPONDENT**

**JUDGMENT**

1. The claimant filed this suit vide a memorandum of claim dated the 9<sup>th</sup> of September, 2016. she avers that she was employed by the respondent on or about the month of September, 2014, under a contract of service as an Administrative Assistant/Accountant earning a gross monthly salary of Kshs. 35000/=

2. The claimant further states that at the expiry of her contract in December, 2014, she was given an extension of the contract starting January, 2015

3. It is her case that she was abruptly, without reason and without payment of her terminal dues, terminated in the same January of 2015

4. The claimant further states that she did not belong to any labour union during her employment with the respondent

5. The claimant prays that the court grants her:

- i. A declaration that her employment was unlawfully and unfairly terminated
- ii. Compensation equivalent to 12 month's salary at Kshs. 35,000 per month
- iii. Damages
- iv. Costs of the suit

6. The respondent filed a statement of defense on 19<sup>th</sup> October, 2016, through the Firm of Avedi & Co. Advocates, and pleaded as follows:

- i. That the reference of the matter to the court is incompetent as the claimant had not satisfied the requirements of the Labour relations Act
- ii. That the claimant's allegations are not supported by any material facts
- iii. That the claimant is not entitled to any terminal dues as she was not directly employed by the respondent
- iv. The claimant's claim should fail and be dismissed for want of basis
- v. Costs of the suit

7. The Firm of Avedi & Co. Advocates later filed a motion to cease acting for the respondent, which motion was allowed and the Firm of Kimani, Kiarie & Associates Advocates, came on record for the respondents on the 4<sup>th</sup> of May, 2018.

8. Parties attempted an out of court settlement but failed to reach a consent
9. The respondent through their counsel filed a notice of motion application dated 11<sup>th</sup> December, 2019, seeking to have the suit dismissed for want of prosecution.
10. The motion was withdrawn in open court on 4<sup>th</sup> of February, 2020.
11. The court issued notice to show cause why the suit should not be dismissed for want of prosecution on 12<sup>th</sup> of April, 2021, when parties failed to fix the matter for hearing as ordered when the matter was last in court on 9<sup>th</sup> of March, 2020
12. The court set aside the notice to show cause on the 7<sup>th</sup> of July, 2021, and ordered that the matter be heard on 29<sup>th</sup> July, 2021.
13. On the hearing date, the respondent and their counsel were absent and there being an Affidavit of Service on record to show that a hearing notice had been issued to the respondent, the matter proceeded in the absence of the respondent and their counsel

### **The Issues**

14. The claimant testified in support of her case and the court sifted out the following issues for determination:
  - i. Whether the claimant was an employee of the respondent
  - ii. Whether the claimant was unfairly/unlawfully terminated
  - iii. Whether the claimant is deserving of the reliefs sought

### **Whether the claimant was an employee of the respondent**

15. The claimant's testimony was that she was employed by the respondent in September, 2014, as an accounts assistant/office administrator.
16. She produced a letter of temporary employment issued on the 15<sup>th</sup> September, 2014, and signed by a Mr. Christian Muchugu, who was said to be a manager of the respondent.
17. The contract according to the said letter was to run between 15<sup>th</sup> September, 2014, to 31<sup>st</sup> December, 2014.
18. In a further letter produced in court by the claimant, she was given an extension of contract and the same was to run from 1<sup>st</sup> January, 2015.
19. The extension letter however, only provided when the contract was to commence but did not indicate when the same was to terminate.
20. The contract issued to the claimant by the respondent which was to run between 15<sup>th</sup> September, 2014 to 31<sup>st</sup> December, 2014, was a fixed term contract which lapsed on the 31<sup>st</sup> of December, 2014.
21. The extension of contract which did not indicate the last day of the contract, created an employment relationship between the claimant and the respondent and especially that the same was terminated in January, 2015, the same month it was said to have begun.
22. The respondent in their statement of defense deny that the claimant was their employee, but admit that she was hired directly by Mr. Christian Muchugu, who was said to be the chairman of the respondent.
23. The respondent's witness statement by one Arnota Cheptoo, although not produced under oath, stated that she is a manager of the respondent and that she was involved in settlement negotiations aimed at resolving the matter out of court, where the respondent through their counsel made an offer to the claimant. This is an admission that the respondent knew and infact employed the claimant for it to even have thought of settling the case out of court
24. Further, the contract produced in court by the claimant was issued under the letter head of the respondent and the said Mr. Christian Muchugu, only executed the same as a manager of the respondent.
25. The court therefore finds and hold that the claimant was an employee of the respondent.

### **Whether the claimant was unfairly and unlawfully terminated**

26. The claimant stated both in her claim and during the hearing that she was terminated without notice and without reason. It is her case that she was verbally informed that the respondent's Board of Directors had resolved that she be terminated. No documentary evidence either in terms of Board minutes or a termination letter was produced to that effect.

27. The claimant's counsel's letter of demand indicated that she was employed on the 5<sup>th</sup> of January, 2015, through an extension of her initial contract that ran from 15<sup>th</sup> September, 2014 to 31<sup>st</sup> December, 2014 and terminated on the 24<sup>th</sup> of January, 2015.

28. No letter of termination, notice to show cause or minutes of a disciplinary process have been provided to show that the termination of the claimant's contract followed due process.

29. Sections 43(1) of the Employment Act, 2007, demand that an employer gives an employee reasons for termination and the reasons must be valid reasons and failure to do so, the termination will amount to an unfair termination within the meaning of Section 45 of the Employment Act, 2007

30. It is therefore clear that it was not for the claimant to show that she was terminated unfairly but for the respondent to prove that the termination was fair, which in this case it failed to do and the court finds and hold that the termination of the claimant was unfair.

31. From the wording of the temporary letter of appointment issued to the claimant, her contract was a fixed term contract which was to lapse on the 31<sup>st</sup> of December, 2014, had it not been extended.

32. The letter extending the claimant's contract, only stated the starting date as 1<sup>st</sup> January, 2015, but failed to indicate when the same was to lapse, therefore making it an open-ended contract.

33. For this reason and in the absence of evidence to the contrary, the court will construe the claimant's contracts to have been extended for a further 3 months and awards the claimant an equivalent of 3 months' salary in compensation for unfair termination

34. The claimant's initial contract which was the basis of the extension of contract, provided that the same could be terminated in accordance with the labour laws applicable in Kenya. For this reason, the statutory one-month notice provided under Section 35(1)(c) of the Employment Act, 2007 applies.

35. The court finds and holds that the respondent failed to issue the claimant with the statutory one month's notice and hereby awards the claimant a one (1) month's salary in lieu of notice.

36. In conclusion, judgment is hereby entered for the claimant against the respondent in the following terms:

1) A declaration that the termination of the claimant from the service of the respondent was unfair.

2) The respondent to pay the claimant:

i. One-month salary in lieu of notice at Kshs. 35,000/=

ii. 3 Months' salary as compensation for unfair termination amounting to Kshs.105,000/

iii. Costs of the suit

37. It is so ordered.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 13<sup>TH</sup> DAY OF AUGUST, 2021**

**CHRISTINE N. BAARI**

**JUDGE**

**ORDER**

In view of restrictions in physical court operations occasioned by the COVID-19 Pandemic, this judgment has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of court fees.

**CHRISTINE N. BAARI**

**JUDGE**

**Appearance:**

Mr. Kinyanjui present for the Claimant

Ms. Elizabeth Mukuna present for the Respondent