



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO. E699 OF 2020

JECINTA NYAMBURA KAMAU.....CLAIMANT

VERSUS

LABORATORY AND ALLIED LIMITED.....RESPONDENT

JUDGMENT

1. This suit proceeded to formal proof as an undefended suit. The statement of claim is dated 26th October, 2020. The claimant filed a witness statement dated 26/10/2020 and written submissions dated 28th June, 2021.

2. The facts of the case are that the claimant was employed by the respondent as a Human Resource Manager on 14/2/2019 at a monthly salary of Kshs 200,000. The salary was increased to Kshs 23,000 on account of good performance. That on 2/4/3030, after serving the respondent for a period of about one (1) year, the claimant received a letter of termination without notice. The respondent stated in the letter that it had lost confidence and trust in the claimant. That the respondent did not provide a valid reason to terminate the employment of the claimant. The claimant was not accorded a hearing before the termination and she had already completed her probationary period. That there was no complaint lodged against the claimant at all. The claimant states that she worked 9 hours a day instead of 8 hours, and was not paid overtime.

3. That she was victimized for insisting that the respondent adhere to fair labour practices with respect to its employees regarding joining the union, grant of maternity and paternity leave, adherence to occupational and safety Health Act, 2007, imperatives and proper computation of leave days of employees.

4. The claimant states that the respondent violated Articles 41 and 47 of the Constitution and the provisions of Sections 41, 43, and 45 of the Employment Act, 2007 and prays for: -

(a) A Declaration that the termination of the claimant's employment by the Respondent was unfair and unlawful and in violation of the claimant's constitutional Rights under Articles 27, 28, 41(1) and (2) (b) and 47 of the Constitution.

(b) Compensation for unfair and unlawful termination being equivalent of 12 months' gross salary.

(c) Payment of overtime calculated at 1 hour per day for the period of employment.

(d) General damages for breach of Constitutional Rights.

(e) Costs and interest

Determination

5. This is a typical Employment claim founded on the provisions of the Employment Act, and need not be elevated to a constitutional petition.

6. The claim is not disputed, the respondent having failed to file a statement of defence despite service of summons to enter appearance and statement of claim.

7. The claimant has proved on a balance of probabilities that she worked for the respondent as a Human Resource Manager for a period of 12 months. That during that period she worked one extra hour every day without payment of overtime. That she was paid Kshs 213,000 a month

at the time of termination. That the employment was terminated in violation of Section 36, 41, 43 and 45 of the Employment Act in that the termination was without notice, notice to show cause, a valid reason and she was not given a hearing.

8. The claimant has also proved that she is entitled to compensation in terms of Section 49(1) (c) and (4) of the Employment Act. The claimant has not proved that the breach of the contract of employment violated her constitutional rights as alleged in the claim but the evidence suffices to prove the breaches under the provisions of the Employment Act.

9. The Court finds that the termination of the employment of the claimant was unlawful and unfair and in violation of Sections 36, 41, 43 and 45 of the Employment Act, 2007.

10. The claimant has also proved that she worked one hour extra for the period worked without payment of overtime and the claim for overtime is awarded accordingly.

11. With regard to compensation, the Court relies on the decision of **Mary Chemweno Kiptui –vs- Kenya Pipeline Company Limited (2014) eKLR** and **Antony Maina Ruriga –vs- Hilton Hotel Nairobi (2020) eKLR** to award the claimant the equivalent of two months (2) salary for the unlawful and unfair termination of employment. The Court has also considered the one-year period served; the failure to accord the claimant any hearing; that the claimant did not contribute to the termination; that the claimant suffered loss of career progression and means of livelihood unfairly and wished to continue serving. That the claimant was not given notice of termination and was not compensated for the loss.

12. In the final analysis, the Court enters judgment in favour of the claimant against the respondent as follows: -

- (a) Kshs 392,763 being unpaid overtime for the period served.
- (b) Kshs (213,000 x 2) = Kshs. 426,000 being the equivalent of two (2) months' salary in compensation for the unlawful and unfair termination of employment.
- (c) Total award – Kshs 818, 763.
- (d) Interest at Court rates from date of judgment till payment in full.
- (e) Costs of the suit.

For the avoidance of doubt, the claim for General damages for violation of constitutional rights is dismissed for want of adequate prove.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 30TH DAY OF SEPTEMBER, 2021.

Mathews N. Nduma

Judge

Appearances

M/s Hellen Kabita for claimant

Mr. Amam for Respondent

Ekale – Court clerk